SUPREME COURT OF THE UNITED STATES.

No. 77.

THE COLUMBIAN INSURANCE COMPANY OF ALEXANDRIA, PLAINTIFF IN ERROR,

VERSUS

JOSEPH W. LAWRENCE, SURVIVING PARTNER, &c.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE DISTRICT OF COLUMBIA, HOLDEN IN AND FOR THE COUNTY OF ALEXANDRIA.

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UNITED STATES OF AMERICA, *District of Columbia, to wit:*

The President of the United States of America, to the Judges of the United States Circuit Court of the District of Columbia, greeting:

Because in the record and proceedings, and also the rendering of the judgment of a plea which is in the said court for the county of Alexandria, before you or some of you, between Joseph W. Lawrence (surviving partner of Joseph W. Lawrence and Thomas Poindexter) and the Columbian Insurance Company of Alexandria, in a plea of trespass on the case, manifest error hath happened, to the great damage of the said Columbian Insurance Company, as by their complaint appears; and we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, in the District of Columbia, being the present seat of the national government, on the first Monday in January next, that the record and proceedings aforesaid being seen and inspected, the said Supreme Court may cause further to be done therein what of right, and according to the laws and customs of the United States, should be done.

Witness, the honorable John Marshall, Chief Justice of the United States, this 5th day of November, eighteen hundred and thirty-four.

[SEAL.] EDM. I. LEE, *C. C.*

DISTRICT of COLUMBIA, *to wit:*

To Joseph W. Lawrence, (surviving partner of Joseph W. Lawrence and Thomas Poindexter,) greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, being the present seat of the national government, on the second Monday in January next, pursuant to a writ of error filed in the clerk's office of the United States circuit court of the District of Columbia, for the county of Alexandria, wherein the Columbian Insurance Company of Alexandria are plaintiffs, and Joseph W. Lawrence (survivor of him said Lawrence and Thomas Poindexter) is defendant, to show cause, if any there be, why the judgment rendered against the said Columbian Insurance Company of Alexandria, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the honorable John Marshall, Chief Justice of the United States, this 5th day of November, one thousand eight hundred and thirty-four.

W. CRANCH.

DISTRICT OF COLUMBIA, *Alexandria County, to wit:*

Daniel Minor appeared before me, a justice of the peace for the county aforesaid, and made oath, that on the 6th day of November, 1834, he delivered to Thompson F. Mason, attorney for Joseph W. Lawrence, a true copy of the within citation. Given under my hand, this 27th day of November, one thousand eight hundred and thirty-four.

GEO. WISE.

I do acknowledge that D. Minor, deputy marshal, has delivered me a copy of this citation, as the attorney of Joseph W. Lawrence, surviving partner, &c.

THOMSON F. MASON, *Attorney.*

DISTRICT OF COLUMBIA, *to wit:*

Pleas before the honorable the Judges of the United States circuit court, of the District of Columbia, for the county of Alexandria, at the court house, in the town of Alexandria, the 17th day of October, 1834.

Title.

JOSEPH W. LAWRENCE, (surviving partner of Joseph W. Lawrence and Thomas Poindexter,) plaintiff,
against
The COLUMBIAN INSURANCE COMPANY OF ALEXANDRIA, defendants.

Be it remembered, that heretofore, to wit, at rules held at the clerk's office of the court aforesaid, for the month of September, 1831, came the plaintiff, by Thomas Swann and Thomson F. Mason, his attorneys, and filed there a certain declaration in writing, in these words, to wit:

Declaration.

ALEXANDRIA COUNTY, *to wit:*

Joseph W. Lawrence, survivor of Joseph W. Lawrence and Thomas Poindexter, complains of the Columbian Insurance Company of Alexandria, in custody, &c., of a plea, for that whereas the said defendants, in

the lifetime of the said Thomas Poindexter, since deceased, to wit, on the ninth day of April, in the year of our Lord one thousand eight hundred and twenty-three, at the county aforesaid, by their certain policy of insurance, in writing, signed by their president, *p. t.*, James Harper, and attested by their secretary, James Sanderson, in consideration of the sum of one hundred and five dollars, by the said Lawrence and Poindexter to the said defendants in hand paid, they the said defendants agreed to insure & did thereby insure the said Lawrence and Poindexter against loss and damage by fire, to the amount of seven thousand dollars, on their stone mill, called the Elba Mill, four stories high, situate on an island about one mile from Fredericksburg, in the county of Stafford, and covered with wood, not within thirty yards of any other building, except a corn house, which was about twenty feet off. In consideration, therefore, of the premises, the said president and directors of the said insurance company did thereby covenant, promise, and agree, to and with the said Lawrence and Poindexter, to pay, satisfy, or reinstate all loss or damage which the assured might or should sustain by fire upon the property thereby insured, not exceeding in amount the said sum of seven thousand dollars, if such loss or damage should be sustained within the term of one year from the day of the date of the said presents, which should be deemed to expire at noon on the ninth day of April, 1824. And the said company did further covenant, promise, and agree, to and with the said assured, that the said insurance should continue and be in force from the expiration of the time before mentioned for its duration, for so long as the said assured or their assigns should continue to pay the like rate of premium as had been paid for this assurance, for so long as the company should agree to accept and actually receive the same from the assured or their assigns; provided that the premium for a continuance of the insurance should be actually paid by the assured or their assigns to the said company before the day limited for the termination of the risk, and such payment endorsed on the said policy, or a receipt therefor given by the said company: and it was further agreed, that the amount of such loss or damage as the assured or their assigns should be entitled to receive, by virtue of the said policy, should be paid within sixty days after notice and proof thereof made by the assured in conformity to the conditions of the said company, subjoined to the said policy: provided always, nevertheless, and it was thereby declared, that the said company should not be liable or bound to pay the said assured, in the said policy named, their executors, administrators, or assigns, for any loss or damage by fire that might happen or take place in consequence of any invasion, civil commotion, riot, or any military or usurped power whatsoever: provided also, that in case the assured should have any other insurance made on the thereby insured premises, he should notify the same to the said company before or at the time of the execution of the said policy, and would cause the same to be endorsed thereon; otherwise the said insurance should be void and of none effect. And if the said assured or their assigns should thereafter make any other insurance on the thereby insured premises, they should, with all reasonable diligence, notify the same to the said company, and have the same endorsed on the said policy, or otherwise acknowledged in writing by the said company; or, in default thereof, the said policy should cease and be of no effect. And it was further declared and agreed, that in case of any other insurance being made upon the premises thereby insured, either prior or subsequent to the date of the said presents, the assured should not, in case

of loss or damage, be entitled to demand or recover on the said policy any greater proportion of the loss sustained than the amount thereby insured should bear to the whole amount of the several insurances made or to be made on the premises insured by the said policy. And it was agreed and declared to be the true intent and meaning of the parties to the said policy, and of the said policy, that in case the buildings should at any time after making and during the time *of* the said policy would otherwise continue in force, be appropriated or used for the purpose of carrying on or exercising the trade, business, or vocation of a soap boiler, tallow chandler, brewer, maltster, baker, rope maker, sugar refiner, distiller, chemist, varnish maker, paper maker, stable keeper, tavern keeper, china, glass, or earthenware seller, oil and colourman, printer, cooper, carpenter, cabinet maker, coach maker, boat builder, ship chandler, or apothecary, or any manufactory which requires fire-heat, or should be used for the purpose of storing therein gunpowder, hemp, flax, oil, pitch, tar, rosin, turpentine, spirits of turpentine, aquafortis, straw, hay, grain unthrashed, fodder, distilled spirits, or other hazardous goods, for theatrical or other public exhibitions, that then and from thenceforth, so long as the said building should be wholly or in part appropriated or used for any or either of the purposes aforesaid, the said presents should cease and be of no force or effect, unless otherwise especially agreed by the said company, and such agreement signified in writing. And it was moreover declared, that the said policy or the insurance thereby intended to be made did not comprehend or cover books of account, written securities, deeds, or other evidences of titles to lands, bills, notes, or other evidences of debts, money, or bullion. And it was understood and agreed, as well by the said company as by the assured named in the said policy, and all others who might become interested therein, that the insurance was made and accepted in reference to the conditions which accompanied the said presents; and in every case the said conditions were to be used to explain the rights and obligations of the parties, except so far forth as the policy itself expressly declares those rights and obligations. It was further agreed, that the said policy was not assignable, unless by consent of the company, manifested in writing; which said policy, signed by the said James Harper, president *p. t.* of the said Columbian Insurance Company, and attested by James Sanderson, secretary of the said company, is to the court now here shown, the date whereof is on the same day and year aforesaid. And the said plaintiff, in fact says, that the said Lawrence and Poindexter were interested in and the equitable owners of the premises insured as aforesaid, at the time the insurance was made as aforesaid, and continued to be interested in and owners as aforesaid, of the said premises; and that while the said Lawrence and Poindexter were so interested and owners as aforesaid, and while the said premises were so insured as aforesaid, that is to say, on the 14th day of February, in the year of our Lord 1824, at the county of Stafford aforesaid, the said premises, so insured as aforesaid, were wholly and entirely consumed by fire, and wholly lost to the said Lawrence and Poindexter; of which said loss, together with the proofs thereof, in conformity with the conditions subjoined to the said policy, the said defendants, on the 20th day of February, in the year last mentioned, at the county of Alexandria aforesaid, had due and regular notice, by means whereof the said defendants became liable and bound to pay to the said Lawrence and Poindexter the said sum of seven thousand dollars, according to the tenor and effect of

their policy of insurance aforesaid; and being so liable, the said defendants, in consideration thereof, afterward, to wit, on the same day and year aforesaid, at the county aforesaid, took upon themselves, and to the said Lawrence and Poindexter then and there promised that they would satisfy and pay them the said sum of money, according to the tenor and effect of the said policy. Nevertheless, the said defendants, not regarding their promises and assumptions so as aforesaid made, but contriving to injure the said Lawrence and Poindexter, in the lifetime of the said Thomas Poindexter, in this behalf, the said sum of money or any part thereof, to the said Lawrence and Poindexter, or either of them, in the lifetime of the said Thomas Poindexter, according to the tenor and effect of the said policy, have not paid, nor to the said plaintiff since the death of the said Thomas Poindexter, but the same to pay have altogether refused, and still do refuse, to the damage of the said plaintiff of twelve thousand dollars; and therefore he brings suit, &c.

SWANN and MASON, *for the Plaintiffs.*

Common Order.

And the said defendants being arrested, and not appearing on the motion of the plaintiff by his attorneys, it is ordered that judgment be entered for the plaintiff against the defendant for what damages the plaintiff hath sustained by occasion of the said defendant's nonperformance of the promise and assumption in the declaration mentioned, unless the said defendant shall appear and plead to issue at the next rules.

Oyer of the Policy of Insurance, and of the Conditions annexed to it, prayed—Continued.

And afterwards, to wit, at rules held in the clerk's office aforesaid, for the month of October, 1831, came the plaintiff by his said attorneys; and the defendants, by Walter Jones, their attorney, came also, and prayed oyer of the policy of insurance, in the declaration mentioned; and of the conditions in the said declaration and policy mentioned as being subjoined to the said policy, accompanying the same, and this cause is continued.

Oyer granted—Cause docketed—Leave to file Special Pleas, &c., and to take Depositions.

And afterwards, to wit, at a court continued and held for said county the 18th day of November 1831, came the parties by their attorneys, and it is agreed that oyer be granted as prayed, and it is granted by filing the original policy, and the conditions therein referred to, being the fundamental rules, &c. endorsed on the policy; the cause to be put on the trial docket among the new issues of this term, on the general issue, with leave to the defendants to plead any special pleas, including pleas of the statute of limitations, in sixty days from the end of this term; also, with leave to either party to take out commissions for the examination of witnesses out of the District of Columbia, before a single magistrate, on reasonable notice of the time and place of caption.

The said policy of insurance and the conditions or fundamental rules thereon endorsed are in these words, to wit:

Policy of Insurance.

By the Columbian Insurance Company of Alexandria.

No. 279.—$7000.

This instrument or policy of insurance witnesseth, that the president and directors of the Columbian Insurance Company of Alexandria, in consideration of the sum of one hundred and five dollars, by John H. Ladd, for Law-

rence and Poindexter, to the said company paid, the receipt whereof is hereby acknowledged, have agreed to insure, and do hereby insure Lawrence and Poindexter against loss or damage by fire, to the amount of seven thousand dollars, on their stone mill, called the Elba mill, four stories high, situate on an island about one mile from Fredericksburgh, in the county of Stafford, and covered with wood; not within thirty yards of any other building, except a corn house, which is about twenty yards off In consideration therefore, of the premises, the president and directors of the Columbian Insurance Company of Alexandria do hereby covenant, promise, and agree, to and with the said Lawrence and Poindexter, their executors, administrators, and assigns, to pay, satisfy, or reinstate all loss or damage which the assured or their assigns may or shall sustain by fire upon the property hereby insured, not exceeding in amount the said sum of seven thousand dollars, if such loss or damage shall be sustained within the term of one year from the day of the date of these presents, which shall be deemed to expire at noon on the ninth day of April, in the year of our Lord one thousand eight hundred and twenty-four. And this company doth further covenant, promise, and agree, to and with the said assured, their executors, administrators, and assigns, that this insurance shall continue and be in force from the expiration of the time before mentioned for its duration, for so long as the said assured or their assigns shall continue to pay the like rate of premium as has been paid for this insurance, for so long as the company shall agree to accept and actually receive the same from the assured or their assigns: provided, that the premium for a continuance of the insurance shall be actually paid by the assured or their assigns to this company before the day limited for the termination of the risk, and such payment endorsed on this policy, or a receipt therefor given by this company. And it is further agreed that the amount of such loss or damage as the assured or assigns shall be entitled to receive by virtue of this policy shall be paid within sixty days after notice and proof thereof made by the assured, in conformity to the conditions of this company, subjoined to this policy. Provided always, nevertheless, and it is hereby declared, that this company shall not be liable or bound to pay the said assured in this policy named, their executors, administrators, or assigns, for any loss or damage by fire that may happen or take place in consequence of any invasion, civil commotion, riot, or any military or usurped power whatsoever. Provided, also, that in case the assured shall have already any other insurance made on the hereby insured premises, he shall notify the same to this company before or at the time of the execution of this policy, and cause the same to be endorsed thereon; otherwise, this insurance shall be void and of none effect: and if the said assured or their assigns shall hereafter make any other insurance on the hereby insured premises, he shall with all reasonable diligence notify the same to this company, or in default thereof, this policy shall cease, and be of no further effect. And it is further declared and agreed, that in case of any other insurance being made upon the premises hereby insured, either prior or subsequent to the date of these presents, the assured shall not, in case of loss or damage, be entitled to demand or recover on this policy any greater proportion of the loss sustained than the amount hereby insured shall bear to the whole amount of the several insurances made or to be made on the premises insured by this policy. And it is agreed and declared to be the true intent and meaning of the parties hereto, and of these presents, that in case the above mentioned building shall, at any time after the making, and during the time this

policy would otherwise continue in force, be appropriated or used for the purpose of carrying on or exercising the trade, business, or vocation of a soap boiler, tallow chandler, brewer, maltster, baker, rope maker, sugar refiner, distiller, chemist, varnish maker, paper maker, stable keeper, tavern keeper, china, glass, or earthenware seller, oil or colourman, printer, cooper, carpenter, cabinet maker, coach maker, boat builder, ship chandler, or apothecary, or any manufactory which requires the use of fire heat, or shall be used for the purpose of storing therein gunpowder, hemp, flax, oil, pitch, tar, rosin, turpentine, spirits of turpentine, aquafortis, straw, hay, grain unthreshed, fodder, distilled spirits, or other hazardous goods, for theatrical or other public exhibitions, that then and from thenceforth, so long as the said building shall be wholly or in part appropriated, or used for any or either of the purposes aforesaid, these presents shall cease and be of no force or effect, unless otherwise especially agreed by this company; and such agreement be signified in writing. And it is moreover declared that this policy, or the insurance hereby intended to be made, does not comprehend or cover books of account, written securities, deeds, or other evidences of title to lands, bills, notes, or other evidences of debts, money, or bullion. And it is understood and agreed, as well by this company as by the assured named in this policy, and all others who may become interested therein, that this insurance is made and accepted in reference to the conditions which accompany these presents; and in every case the said conditions are to be used to explain the rights and obligations of the parties, except so far forth as the policy itself expressly declares those rights and obligations.

In witness whereof the said company have caused these presents to be signed by their president, and attested by their secretary, on this ninth day of April, in the year of our Lord one thousand eight hundred and twenty-three.

N. B. This policy is not assignable, unless by consent of the company, manifested in writing.

JAMES HARPER, *President, p. t.*

Attested: JAMES SANDERSON, *Secretary.*

Fundamental Rules annexed to the Policy.

Fundamental rules of the Columbian Insurance Company of Alexandria, for risk against fire.

1. Persons desirous to make insurance on buildings are to state in writing the following particulars, viz.: of what materials the walls and roofs of each building are constructed, as well as the construction of the buildings contiguous thereto; whether the same are occupied as private dwellings, or how otherwise; where situated; also, the name or names of the present occupiers.

Each building must be separately valued, and a specified sum insured thereon; and, in like manner, a separate sum insured on the property contained therein.

All manufactories which contain furnaces, kilns, stoves, ovens, or use fire heat, are chargeable at additional rates.

In the assurance of goods, wares, and merchandise, the building or place in which the same are deposited to be described; also whether such goods are of the kinds denominated hazardous, and whether any manufactory is carried on in the premises. And if any person or persons shall insure his or their buildings or goods, and shall cause the same to be described in the

policy otherwise than as they really are, so as the same be charged at a lower premium than would otherwise be demanded, such insurance shall be of no force.

2. Goods held in trust, or on commission, are to be insured as such; otherwise, the policy will not extend to cover such property.

3. No loss or damage to be paid on fire happening by any invasion, foreign enemy, civil commotion, riot, or any military or usurped power whatever, nor for damage done by fire occasioned by earthquakes and hurricanes; but this company will make good losses on property burnt by lightning.

4. Books of accounts, written securities, bills, bonds, and ready money cannot be insured.

5. Jewels, plate, medals, or other curiosities, paintings, and sculptures, are not included in any insurance, unless such articles are specified in the policy.

6. Persons insuring property at this office must give notice of any other insurance made elsewhere for their behalf on the same, and cause such insurance to be endorsed on their policies; and, unless such notice is given, the insured will not be entitled to recover in case of loss.

7. Every policy of insurance issued by this company shall be signed by the president, and attested by the secretary; and the person for whose interest the insurance is made must be declared and named therein; nor can any policy or interest therein be assigned, but by consent of the company, expressed by endorsement made thereon.

8. No insurance will be considered as made or binding until the premium be actually paid.

9. All persons assured by this company sustaining any loss or damage by fire, are forthwith to give notice to the company, and, as soon as possible thereafter, deliver in as particular an account of their loss or damage, signed with their own hands, as the nature of the case will admit of, and make proof of the same by their oath or affirmation, and by their books of accounts, or other proper vouchers, as shall be reasonably required; and shall procure a certificate under the hand of a magistrate or a sworn notary of the town or county in which the fire happened, not concerned in such loss, directly or indirectly, importing that they are acquainted with the character and circumstances of the person or persons insured, and do know or verily believe that he, she, or they, really and by misfortune, without any kind of fraud or evil practice, have sustained by such fire loss or damage to the amount therein mentioned; and, until such affidavit and certificate are produced, the loss claimed shall not be payable; also, if there appears any fraud, the claimaint shall forfeit his claim to restitution or payment by virtue of his policy.

10. In case any difference shall arise between the assured and the company, touching any loss or damage, such difference may be referred to two persons, one to be chosen by the assured, out of three persons to be named by the president of the said company; and the other by the president, out of three persons named by the assured, whose award in writing shall be conclusive and binding on both parties. And when any loss or damage shall have been duly proved, the insured shall receive satisfaction to the full amount thereof, without any allowance of any discount, fees, or other reduction whatever.

11. Persons choosing to insure for seven years will be charged for six

years only; and, for a less number than seven, will be allowed a reasonable discount.

12. The president and directors of this company, for the time being, shall have the power to alter, amend, or abolish those rules, or any of them, and from time to time add others to them, giving suitable public notice thereof.

Judgment by default for want of Pleas. Rule, Security for Costs.

And afterwards, to wit, at a court continued and held for the county aforesaid, the first day of May, 1832, came the plaintiff by his attorneys, and the defendants said nothing in bar or preclusion of the plaintiff's action, whereby the plaintiff therein against them remained altogether undefended; therefore, it was ordered that judgment be entered for the plaintiff against the defendants, for such damages as he hath sustained by occasion of the defendant's nonperformance of the promise and assumption in the declaration mentioned, and the costs; and thereupon came the defendants by their attorney, and it appearing to the satisfaction of the court that the plaintiff is not an inhabitant of this district, on the motion of the defendant by his attorney, it is ordered, that this suit be dismissed at the next term, unless security for the payment of such costs and damages as may be awarded the defendant, and also of the fees which will become due from the plaintiff to the officers of this court, be given with the clerk within sixty days from this time.

Special Pleas offered.

And afterwards, to wit, at a court continued and held for said county the 5th day of May, 1832, came the parties by their attorneys, and the defendants offered special pleas; and this cause is continued.

Non-assumpsit, General Replication, and Issue.

And afterwards, to wit, at a court continued and held for said county the first day of November, 1832, came the parties by their attorneys, and the defendants defend the force and injury, when, &c.; and for plea said that they did not assume upon themselves in manner and form as the plaintiff against them has complained; and of this they put themselves upon the country; to which plea the plaintiff replies generally, and issue.

Demurrer to Declaration.

And afterwards, to wit, at a court continued and held for said county the third day of November, 1832, came the parties by their attorneys, and the defendants defend the force and injury, when, &c., and pray judgment of the said declaration, because he says that the said declaration, and the subject matter therein contained, are insufficient in law for him, the said plaintiff, to maintain his said action against them, to which said declaration the said defendants are under no necessity, nor in anywise bound by the law of the land to answer; and this they are ready to verify; wherefore, for want of a sufficient declaration in this case, the said defendants pray judgment of the said declaration if the said plaintiff ought to have or maintain his action against them. And for causes of demurrer in this behalf the said defendants, by their attorney, set down the following, to wit:

1. Because the plaintiff, in his said declaration, has not set forth the contents, substance, or effect of the said conditions in the said declaration mentioned as being subjoined to and accompanying the said policy of insu-

rance, but has left it altogether uncertain what said conditions import on their face, or what is their legal effect.

2. Because the plaintiff, in his said declaration, has not averred, or in any manner shown a compliance on his part with the said conditions, or with the said fundamental rules so endorsed on and forming part of the said policy of insurance.

3. Because the plaintiff in his said declaration has not averred, or in any manner shown, but has left it altogether uncertain what proofs of loss were required by the said conditions therein mentioned, or what notice thereof was given in conformity with such conditions, or what proof or notice were required by said conditions, or conformable thereto.

4. Because the plaintiff in his said declaration has not averred, or in any manner shown what property he and said Poindexter had in the insured premises, nor any sufficient proprietary interest.

5. Because the plaintiff in his said declaration has not averred, or in any manner shown that defendants were required either to pay, satisfy, or reinstate the loss and damage complained of, or that defendants refused to do either.

6. Because the plaintiff in his said declaration has not averred, or in any manner shown the payment of the premium, or the compliance on the part of the plaintiff with any other of the conditions, stipulations, and agreements on his part and behalf to be performed according to the tenor and effect of said policy.

7. Because the said declaration is altogether illegal, informal, and void. In which demurrer plaintiff joins.

Judgment for Defendant on dem. to Declaration—Leave to file Amended Declaration.—Continued.

And thereupon the matters of law arising upon the defendant's demurrer to the plaintiff's declaration being argued, it seems to the court that the said declaration, and the matters therein contained, are not sufficient in law for the plaintiff to have and maintain his action against the said defendants; therefore it is considered, &c. And on motion of the plaintiff by his attorneys, leave is given him to file an amended declaration in this cause, and the cause is continued.

And afterwards, to wit, at a court continued and held for said county the 31st day of May, 1833, came the plaintiff by his said attorneys, and filed his amended declaration in these words, viz.:

Amended Declaration.

ALEXANDRIA COUNTY, *to wit:*

Joseph W. Lawrence, surviving partner of him, the said Joseph W. Lawrence, and Thomas Poindexter, now deceased, complains of the Columbian Insurance, Company of Alexandria, in custody, &c. of a plea; for that whereas the said Lawrence and Poindexter, in the lifetime of him, the said Thomas Poindexter, that is to say, on the ninth day of April, in the year of our Lord one thousand eight hundred and twenty-three, at the county aforesaid, by their certain policy of insurance in writing, signed by James Harper, their president, *p. t.*, and attested by their secretary, James Sanderson, in consideration of the sum of one hundred and five dollars by John H. Ladd, for them the said Lawrence and Poindexter, in hand paid to the said defendants, they, the said defendants, agreed to insure, and did thereby insure the said Lawrence and Poindexter against loss or damage by fire, to the amount of seven thousand dollars, on their stone mill called the Elba mill, four stories high, situate on an island about one mile from Fredericksburg, in the county of Stafford, and covered with wood, not

within thirty yards of any other building, except a corn house, which was about twenty yards off. In consideration, therefore, of the premises, the president and directors of the said Insurance Company did thereby covenant, promise, and agree, to and with the said Lawrence and Poindexter, to pay, satisfy, and reinstate all loss or damage which the assured might or should sustain by fire upon the property thereby insured, not exceeding in amount the said sum of seven thousand dollars, if such loss or damage should be sustained within the term of one year from the day of the date of the said presents, which should be deemed to expire at noon on the ninth day of April, in the year of our Lord one thousand eight hundred and twenty-four. And the said defendants did further covenant, promise, and agree, to and with the said assured, that the said insurance should continue and be in force from the expiration of the time before mentioned for its duration for so long as the said assured should continue to pay the like rate of premium as had been paid for the said insurance, for so long as the company should agree to accept and actually receive the same from the assured: provided, that the premium for a continuance of the insurance should be actually paid by the assured to the said company before the day limited for the termination of the risk, and such payment endorsed on the said policy, or a receipt therefor given by the said company. And it was further agreed, that the amount of such loss or damage as the assured should be entitled to receive by virtue of the said policy should be paid within sixty days after notice and proof thereof made by the assured, in conformity to the conditions of the said company subjoined to the said policy: provided, nevertheless, and it was thereby declared, that the said company should not be liable or bound to pay the said assured in the said policy named for any loss or damage by fire that might happen or take place in consequence of any invasion, civil commotion, riot, or any military or usurped power whatsoever: provided, also, that in case the assured should have already any other insurance made on the said thereby insured premises, he should notify the same to the said company before or at the execution of the said policy, and cause the same to be endorsed thereon; otherwise, the said insurance should be void and of none effect. And if the said assured should thereafter make any other insurance on the thereby insured premises, he should, with all reasonable diligence, notify the same to the said company, and have the same endorsed on the said policy, or otherwise acknowledged in writing by the said company; or, in default thereof, the said policy should cease and be of no further effect. And it was further declared and agreed that, in case of any other insurance being made upon the premises thereby insured, either prior or subsequent to the date of the said presents, the assured should not, in case of loss or damage, be entitled to demand or recover on the said policy any greater proportion of the loss sustained than the amount thereby insured should bear to the whole of the several insurances made or to be made on the premises insured by the said policy. And it was agreed and declared to be the true intent and meaning of the parties thereto, and of the said presents, that, in case the above mentioned building should, at any time after the making and during the time the said policy would otherwise continue in force, be appropriated or used for the purpose of carrying on or exercising the trade, business, or vocation of a soap boiler, tallow chandler, brewer, maltster, baker, rope maker, sugar refiner, distiller, chemist, varnish maker, paper maker, stable keeper, tavern keeper, china, glass, or earthen seller, oil and colourman, printer, cooper, carpenter, cabinet maker, coach maker,

boat builder, ship chandler, or apothecary, or any manufactory which requires the use of fire heat, or should be used for the purpose of storing therein gunpowder, hemp, flax, oil, pitch, tar, rosin, turpentine, spirits of turpentine, aquafortis, straw, hay, grain unthreshed, fodder, distilled spirits, or other hazardous goods, for theatrical or other public exhibitions, that then and from thenceforth, so long as the said building should be wholly or in part appropriated or used for any or either of the purposes aforesaid, the said presents should cease and be of no force or effect, unless otherwise especially agreed by the said company, and such agreement be signified in writing. And it was moreover declared that the said policy, or the insurance thereby intended to be made, did not comprehend or cover books of account, written securities, deeds, or other evidences of title to lands, bills, notes, or other evidences of debts, money, or bullion. And it was understood and agreed, as well by the said company as by the assured named in the said policy, and all others who might become interested therein, that the said insurance was made and accepted in reference to the conditions which accompanied the said presents; and in every case the said conditions were to be used to explain the rights and obligations of the parties, except so far forth as the policy itself expressly declares those rights and obligations. It was further agreed that the said policy was not assignable, unless by consent of the company manifested in writing. Which said policy, signed as aforesaid by the said James Harper, president *p. t.* of the said company, and attested by James Sanderson, secretary of the said company, is to the court now here shown, the date whereof is on the same day and year aforesaid.

And the said plaintiff saith, that among other conditions which accompanied and were subjoined to the said policy were the following, to wit:

1. Persons desiring to make insurance on buildings were to state in writing the following particulars, viz.: of what materials the walls and roofs of each building were constructed, as well as the construction of the buildings contiguous thereto; whether the same were occupied as private dwellings, or how otherwise; where situated; also the name or names of the present occupiers. And it was among other things further declared, that if any person or persons should insure his or their buildings or goods, and should cause the same to be described in the policy otherwise than as they really were, so as the same be charged at a lower premium than would otherwise be demanded, such insurance should be of no force.

8. No insurance will be considered as made or binding until the premium be actually paid.

9. All persons assured by this company sustaining any loss or damage by fire, are forthwith to give notice to the company, and, as soon as possible thereafter, deliver as particular an account of their loss or damage, signed with their own hands, as the nature of the case will admit of, and make proof of the same by their oath or affirmation, and by their books of accounts or other proper vouchers, as shall be reasonably required, and shall procure a certificate under the hand of a magistrate or a sworn notary of the town or county in which the fire happened, not concerned in such loss directly or indirectly, importing that they are acquainted with the character and circumstances of the person or persons insured, and do know, or verily believe that he, she, or they, really and by misfortune, without any kind of fraud or evil practice, have sustained by such fire loss or damage to the amount therein mentioned; and until such affidavit and certificate are pro-

duced, the loss claimed shall not be payable; also, if there appears any fraud, the claimant shall forfeit his claim to restitution or payment by virtue of his policy.

And the said plaintiff, in fact, further saith that he, the said plaintiff, and the said Poindexter, at the time of their insurance aforesaid, paid to the said defendants the premium of one hundred and five dollars for the insurance aforesaid. And *they* further say that, at the time of the insurance aforesaid, they were interested in and owners of the premises insured as aforesaid; and that the said premises were of greater value than the sum insured as aforesaid; and that their interest in the same amounted to more than the sum insured as aforesaid; and that they continued to be interested in, and owners as aforesaid of the said premises; and that, while the said plaintiff and the said Poindexter were so interested in and owners as aforesaid, that is to say, on the 14th day of February, in the year 1824, at the county of Stafford aforesaid, the said premises were wholly and entirely consumed by fire, and wholly and entirely lost to the said plaintiff and the said Poindexter, of which said loss the said defendants forthwith, that is to say, on the twentieth day of February, in the year last mentioned, had notice. And the said plaintiff further saith that, in compliance with the conditions subjoined, as herein before mentioned, to the said policy of insurance, they, the said plaintiff and the said Poindexter, did prepare and make their affidavit in writing, in due form of law, signed with their own hands, in substance as follows, that is to say: "We hereby certify that, by the burning of our mill, situated on an island in the county of Stafford, about one mile from the town of Fredericksburg, and State of Virginia, called the Elba Mill, four stories high, the walls of stone, covered with wood, on which seven thousand dollars were insured by us in the office of the Columbian Insurance Company of Alexandria on the 9th day of April last, per policy No. 279, and which was destroyed by fire on the night of Saturday last, the 14th instant, we lost or were damaged at least twelve thousand dollars, exclusive of the contents of the said mill. We are entirely ignorant of the circumstances which occasioned the fire. And we further certify, that we have no other insurance, directly or indirectly, on the aforesaid property, except the above mentioned.

JOSEPH W. LAWRENCE,
THOMAS POINDEXTER, Jr."

Which said affidavit was sworn to by them, the said Lawrence and Poindexter, before Murry Forbs, a justice of the peace for the said county of Stafford. And the said plaintiff and the said Poindexter did then and there procure from him, the said Murry Forbs, a justice of the peace, duly commissioned, in and for the said county of Stafford, and State of Virginia, a certificate in writing, signed with his proper hand and name, in substance as follows, to wit:

"I, Murray Forbs, a magistrate, duly commissioned, in and for the county of Stafford, and State of Virginia, do hereby certify that I am acquainted with Joseph W. Lawrence and Thomas Poindexter; that the fire originated in their mill, burnt on the night of the 14th inst., by accident, or without fraud or design on their part, as far as I know or believe; and that the damage or loss they sustained by the said fire is at least ten thousand dollars. And I further certify, that the said mill was not within thirty yards of any other building, except a corn house, which was about twenty yards off.

MURRAY FORBS."

And the said plaintiff and the said Poindexter did also then and there procure, in writing, the affidavit of one Thomas Sedden, in substance as follows, to wit:

"I, Thomas Sedden, of the town of Fredericksburg, in the county of Spotsylvania, and State of Virginia, do hereby certify, that I am well acquainted with the mill called and known by the name of the Elba Mill, owned and occupied by Joseph W. Lawrence and Thomas Poindexter, situate on an island in the county of Stafford, about one mile from the town of Fredericksburg; that the said mill was built of stone, four stories high, and covered with wood; that, between ten and eleven o'clock on Saturday night, the 14th inst., I was alarmed by the cry of fire, which I soon ascertained to be the mill aforesaid; that I have since viewed the ruins, and am of opinion that it would require at least ten thousand dollars to rebuild the same, and restore the proprietors in the situation they were in previous to the said fire; that I have no knowledge or idea how the fire originated.

THOMAS SEDDEN."

And the affidavit of one James Vass, in substance as follows, to wit:

"I, James Vass, of the town of Falmouth, in the county of Stafford, and State of Virginia, do hereby certify, that I am well acquainted with the mill called and known by the name of the Elba Mill, owned and occupied by Joseph W. Lawrence and Thomas Poindexter, situate on an island in the county of Stafford, and about one mile from the town of Fredericksburg; that the said mill was built of stone, four stories high, and covered with shingles; that, between the hours of ten and eleven o'clock on Saturday night, the 14th current, I was alarmed with the cry of fire, which I soon ascertained to be the mill aforesaid; that I have since viewed the ruins, and am of opinion that it will require the sum of ten thousand dollars, or thereabouts, to restore the proprietors to the situation they were in previous to the said fire; further, that I have no knowledge whatever how the fire originated.

JAMES VASS."

And the said plaintiff further saith, that the said affidavits, and the said certificate of the said Murray Forbs, so made as aforesaid, were procured and made as soon after the said loss by fire as the same could be done, and, together with the notice of the said loss as herein before mentioned, were presented and delivered to the said defendants on the said 20th day of February, in the year of our Lord one thousand eight hundred and twenty-four; and the said defendants making no objections to the said proofs, and refusing to pay, satisfy, or reinstate the loss so sustained by the said plaintiff and the said Poindexter as aforesaid, they, the said plaintiff and the said Poindexter, instituted a suit in the Circuit Court for the county of Alexandria against the said defendants, to recover from them the amount of the said loss, in which said suit such proceedings were had that the said plaintiff, as the surviving partner of himself and the said Poindexter, obtained a judgment in the said Circuit Court against the said defendants for the amount of the said loss, from which judgment the said defendants appealed to the Supreme Court of the United States, and, during the January term of the said Supreme Court, in the year 1829, the said Supreme Court reversed the judgment of the said Circuit Court, and, among other things, decided that the certificate of the said Murray Forbs, so as aforesaid given and laid before the said defendants as one of the proofs of the loss which the conditions

subjoined to the said policy required to be made, was not such a certificate as the said conditions required, and that the said defendants had not waived their objections to the said certificate, as by the record and records of the proceedings and decisions of the said Circuit and Supreme Courts are fully manifest and appear; and the said Supreme Court, so having reversed the said judgment, further ordered and adjudged that the said suit be remanded to the said Circuit Court for further proceedings, and that a *venire de novo* be awarded for the retrial of the issues joined in said suit; in pursuance and execution of which judgment of the Supreme Court, and of the mandate from the said Supreme Court to the said Circuit Court, the said suit was afterwards, to wit, at the term of the said Circuit Court, there reinstated and redocketed for a new trial of the said issues, and was from thenceforth regularly continued on the docket and proceedings of said Circuit Court until the fifth day of November, 1830, on which said day, and before the institution of this present suit, the said suit was, by order of the said plaintiff, duly discontinued, and judgment thereupon rendered in favor of said defendants for costs, &c., as by the record of the proceedings of the said Circuit Court is manifest and fully appears.

And the said plaintiff further saith, that, after the decision of the said Supreme Court so aforesaid made, and as soon as possible thereafter as the same could be obtained, that is to say, on the day of February, in the year one thousand eight hundred and twenty-nine, he did procure from one Robert H. Hooe, a magistrate duly commissioned and sworn for the county of Stafford and State of Virginia, a certificate in writing, signed with his proper hand and name, in substance as follows, to wit:

"I, Robert H. Hooe, a magistrate of the county of Stafford, in the State of Virginia, do hereby certify, that, in the month of February, 1824, I was acquainted with the character and circumstances of Joseph W. Lawrence and Thomas Poindexter; that I continued acquainted with the character and circumstances of the said Poindexter until the time of his removal from the State aforesaid, about the summer or fall of the year aforesaid; that I am yet acquainted with the character and circumstances of said Lawrence, and that I do verily believe that they really, and by misfortune, without any kind of fraud or evil intent, accidentally lost by fire their mill, called the Elba Mill, situated on an island in Rappahannock river, and county of Stafford aforesaid, about one mile from the town of Fredericksburg, on the night of the 14th day of February, 1824; that, by the said burning of the said mill, they sustained a loss to the value of at least ten thousand dollars; that I was a magistrate of the said county at the time of the said fire, and have continued so since. Given under my hand this day of February, 1829.

ROBERT H. HOOE."

That the said certificate, so made as aforesaid, on the 13th day of February, in the year aforesaid, at the town of Alexandria aforesaid, was presented and delivered to the said defendants; and he, the said plaintiff, then and there required the said defendants to pay, satisfy, and reinstate the loss which the said plaintiff and the said Poindexter had sustained as aforesaid.

By means of all which said several acts and proceedings the said defendants became liable and bound to pay, satisfy, and reinstate to the said plaintiff, as surviving partner aforesaid, the loss which they, the said plaintiff and the said Poindexter, had sustained as aforesaid, according to the tenor and effect of the said policy of insurance; and, being so liable, the said defendants, in consideration thereof, afterwards, to wit, on the day and year last mentioned,

at the county aforesaid, assumed upon themselves, and to the said plaintiff then and there faithfully promised, that they would satisfy and reinstate to the said plaintiff, as surviving partner aforesaid, the loss which he, the said plaintiff and the said Poindexter, had sustained as aforesaid, according to the tenor and effect of the said policy. Nevertheless, the said defendants, not regarding their promise and assumption so as aforesaid made, but contriving to injure the said plaintiff in this behalf as surviving partner aforesaid, have not, although often required, paid, satisfied, or reinstated to the said plaintiff the loss which, as surviving partner aforesaid, he had sustained as aforesaid; but the same to pay, satisfy, or reinstate have altogether refused, and the said defendants still do refuse to pay, satisfy, or reinstate to the said plaintiff, as surviving partner aforesaid, the said loss. Wherefore, the said plaintiff saith he is injured, and hath sustained damage, to the value of twelve thousand dollars; and therefore he brings suit, &c.

SWANN & MASON, *for the Plaintiff.*

Pledges, &c.: J. Doe, R. Roe

Rule to plead within sixty days.—Oyer of the proceedings in the Supreme and Circuit Courts in the former trial of this cause prayed and granted.

And, on motion of the plaintiff, by his attorneys, a day is thereupon given the defendants to plead to the plaintiff's said amended declaration, to wit, until sixty days from the filing thereof; and the same day is given the said plaintiff, there, &c. Whereupon the said defendants, by their attorney, as to the said amended declaration of the said plaintiff, come and defend the wrong and injury, when, &c., and crave oyer of the said record and records of the proceedings in the said Circuit Court and in the said Supreme Court, in the matter of the said former suit on the said policy, wherein the said Lawrence and Poindexter were original plaintiffs, and the said Lawrence became sole plaintiff by survivorship, *pendente lite*, and the now defendants were defendants, in the said declaration of the now plaintiff mentioned and referred to; and all and singular the said proceedings, and the record and records thereof, are read to the said defendants in the words following, to wit:

Record of Proceedings in first suit in Circuit and Supreme Courts.

District of Columbia, *to wit:*

Pleas before the honorable the Judges of the United States Circuit Court of the District of Columbia for the county of Alexandria, at the court house of said county, the 22d day of April, in the year of our Lord 1826.

Joseph W. Lawrence and Thomas Poindexter, plaintiffs,
against
The Columbian Insurance Company of Alexandria, defendants.

Be it remembered, that heretofore, to wit, at an United States Circuit Court of the District of Columbia, continued and held for the county of Alexandria the 30th day of April, 1825, came the plaintiffs aforesaid by Thomas Swann, their attorney, and filed their declaration against the Columbian Insurance Company of Alexandria, of a plea of trespass on the case; which declaration is in these words, to wit:

Declaration.

COUNTY OF ALEXANDRIA, *to wit:*

Joseph W. Lawrence and Thomas Poindexter complain of the Columbian Insurance Company of Alexandria, in custody, &c., of a plea, for that whereas the said defendants, on the ninth day of April, in the year of our Lord one thousand eight hundred and twenty-three, at the county aforesaid, by their certain policy of insurance in writing, signed by their president, James Harper, and attested by their secretary, James Sanderson, in consideration of the sum of one hundred and five dollars, by the said plaintiffs to the said defendants in hand paid, they, the said defendants, agreed to insure, and did thereby insure the said plaintiffs against loss and damage by fire, to the amount of seven thousand dollars, on their stone mill called the Elba Mill, four stories high, situate on an island about one mile from Fredericksburg, in the county of Stafford, and covered with wood, not within thirty yards of any other building, except a corn house, which was about twenty feet off. In consideration *thereof* of the premises, the said president and directors of the said insurance company did thereby covenant, promise and agree, to and with the said plaintiffs, to pay, satisfy, or reinstate all loss or damage which the assured might or should sustain by fire upon the property thereby insured, not exceeding in amount the said sum of seven thousand dollars, if such loss or damage should be sustained within the term of one year from the day of the date of the said presents, which should be deemed to expire at noon on the ninth day of April, one thousand eight hundred and twenty-four. And the said company did further covenant, promise, and agree, to and with the said assured, that the said insurance should continue and be in force from the expiration of the time before mentioned for its duration for so long as the said assured or their assigns should continue to pay the like rate of premium as had been paid for this assurance, for so long as the company shall agree to accept and actually receive the same from the assured or their assigns: provided, that the premium for a continuance of the insurance shall be actually paid by the assured or their assigns to the said company before the day limited for the termination of the risk, and such payment endorsed on the said policy, or a receipt therefor given by the said company. And it was further agreed that the amount of such loss or damage as the assured or their assigns should be entitled to receive by virtue of the said policy should be paid within sixty days after notice and proof thereof made by the assured in conformity to the conditions of the said company subjoined to the said policy. Provided always, nevertheless, and it was thereby declared, that the said company should not be liable or bound to pay the said assured in the said policy named, their executors, administrators, or assigns, for any loss or damage by fire that might happen or take place in consequence of any invasion, civil commotion, riot, or any military or usurped power whatsoever. Provided, also, that, in case the assured should have any other insurance made on the thereby insured premises, he should notify the same to the said company before or at the time of the execution of the said policy, and would cause the same to be endorsed thereon; otherwise the said insurance should be void and of none effect. And if the said assured, or their assigns should thereafter make any other insurance on the thereby insured premises, he should, with all reasonable diligence, notify the same to the said company, and have the same endorsed on the said policy, or otherwise acknowledged in writing by the said company, or in default thereof the said policy shall cease and be of no effect. And it was

further declared and agreed that, in case of any other insurance being made upon the premises thereby insured, either prior or subsequent to the date of the said presents, the assured should not, in case of loss or damage, be entitled to demand or recover on the said policy any greater proportion of the loss sustained than the amount thereby insured shall bear to the whole amount of the several insurances made or to be made on the premises insured by the said policy. And it was agreed and declared to be the true intent and meaning of the parties to the said policy, and of the said policy, that, in case the buildings should, at any time after the making, and during the time of the said policy would otherwise continue in force, be appropriated or used for the purpose of carrying on or exercising the trade, business, or vocation of a soap boiler, tallow chandler, brewer, maltster, baker, rope maker, sugar refiner, distiller, chemist, varnish maker, paper maker, stable keeper, tavern keeper, china, glass or earthenware seller, oil and colourman, printer, cooper, carpenter, cabinet maker, coach maker, boat builder, ship chandler, or apothecary, or any manufactory which requires fire heat, or shall be used for the purpose of storing therein gunpowder, hemp, flax, oil, pitch, tar, rosin, turpentine, spirits of turpentine, aquafortis, straw, hay, grain unthreshed, fodder, distilled spirits, or other hazardous goods, for theatrical or other public exhibitions, that then and from thenceforth, so long as the said building should be wholly or in part appropriated or used for any or either of the purposes aforesaid, the said presents should cease, and be of no force or effect, unless otherwise especially agreed by the said company, and such agreement signified in writing. And it is moreover declared that the said policy, or the insurance thereby intended to be made, did not comprehend or cover books of account, written securities, deeds, or other evidences of titles to lands, bills, notes, or other evidences of debts, money, or bullion. And it was understood and agreed, as well by the said company as by the assured named in the said policy, and all others who might become interested therein, that the insurance was made and accepted in reference to the conditions which accompanied the said *presence;* and in every case the said conditions were to be used to explain the rights and obligations of the parties, except so far forth as the policy itself expressly declares those rights and obligations. It was further agreed, that the said policy was not assignable unless by consent of the company, manifested in writing. Which said policy, signed by the said James Harper, president *p. t.* of the said Columbian Insurance Company, and attested by James Sanderson, secretary of the said company, is to the court now here shown, the date whereof is on the same day and year aforesaid.

And the said plaintiffs in fact say, that they were interested in and the equitable owners of the premises insured as aforesaid, at the time the insurance was made as aforesaid, and continued to be interested in and owners as aforesaid of the said premises; and that while the said plaintiffs were so interested and owners as aforesaid, and while the said premises were so insured as aforesaid, that is to say on the fourteenth day of February, in the year of our Lord one thousand eight hundred and twenty-four, at the county of Stafford aforesaid, the said premises, so insured as aforesaid, were wholly and entirely consumed by fire, and wholly lost to the said plaintiffs; of which said loss, together with the proofs thereof, in conformity with the conditions subjoined to the said policy, the said defendants, on the twentieth day of February, in the year last mentioned, at the county of Alexandria aforesaid, had due and regular notice; by means whereof the said defend-

ants became liable and bound to pay to the said plaintiffs the said sum of seven thousand dollars, according to the tenor and effect of their policy of insurance aforesaid; and, being so liable, the said defendants, in consideration thereof, afterwards, to wit, on the same day and year aforesaid, at the county aforesaid, took upon themselves, and to the said plaintiffs *there and* promised that they would satisfy and pay them the said sum of money, according to the tenor and effect of the said policy. Nevertheless, the said defendants, not regarding their promises and assumptions so as aforesaid made, but contriving to injure the said plaintiffs in this behalf, the said sum of money to the said plaintiffs according to the tenor and effect of the said policy have not paid, but the same to them to pay have altogether refused, and still do refuse, to the damage of the said plaintiffs of twelve thousand dollars. Therefore they bring suit, &c.

SWANN & MASON, *for Plaintiffs.*

Pledges, &c.; J. Doe, R. Roe.

Non Assumpsit joined—Case docketed—Leave to take Depositions.

Whereupon the said defendants appeared by Robert I. Taylor, their attorney, and the said defendants, by their said attorney, say that they did not assume and undertake upon themselves in the manner and form as the plaintiffs against them have complained; and of this they put themselves upon the country, and the plaintiffs likewise. And by consent of parties, this cause is placed upon the docket of new issues, to be tried at the next term of this court; and by consent, general commissions for the examination of witnesses may be issued, directed to any two magistrates within the District, or without.

Continued.

At another day, to wit, at a court continued and held for the District and county aforesaid the 6th day of December, 1825, came the parties aforesaid, by their attorneys, and the cause is continued.

Suit abates as to Poindexter, by death—Jury sworn, and continued till to-morrow.

At another day, to wit, at a court continued and held for the District and county aforesaid the 19th day of April, 1826, came the parties by their said attorneys, and this suit abates as to the plaintiff Thomas Poindexter, by his death; and thereupon came a jury, to wit, Jesse Wherry, Luther Chamberlain, George H. Smoot, William A. Slacum, William M. Maynadier, Benjamin Baden, Horace Field, Samuel Harper, Jonathan Butcher, John Rumney, Thomas Brocchus, and William D. Nutt, who, being sworn and affirmed well and truly to try the issue joined, by consent of the parties, and with the assent of the court, are continued until to-morrow.

Jury continued till to-morrow.

At another day, to wit, at a court continued and held for the District and county aforesaid the 20th day of April, 1826, came the parties aforesaid by their said attorneys; and the jury sworn to try the issue in this cause appeared in court, and, by leave of the court and consent of the parties, are continued until to-morrow.

Jury retire.

At another day, to wit, at a court continued and held for the District and county aforesaid the 21st day of April, 1826, came the parties aforesaid by

their attorneys, and the jury sworn to try the issue appeared in court, and, having heard the evidence and arguments of counsel, retired to consider of their verdict.

Verdict and Judgment for Plaintiff.

And now here, at this day, to wit, at a court continued and held for the District and county aforesaid on the 22d day of April, 1826, came the parties aforesaid by their said attorneys; and the jury sworn and affirmed to try the issue in this cause appeared in court, and returned the following verdict, to wit: "We of the jury find for the plaintiff, and assess his damages at seven thousand dollars, being the principal sum due, to carry interest from the 21st of April, 1824, till paid." Therefore it is considered by the court that the said plaintiff recover of the said defendants the aforesaid sum of seven thousand dollars, damages aforesaid, by the jurors aforesaid assessed, with interest thereon as aforesaid, and also his costs by him about his suit in this behalf expended. And the said defendant in mercy, &c.

Plaintiff's costs, $77 81. Defendants' costs, $29 48.

Whereupon the defendant tendered two bills of exception, which are signed, sealed, and ordered to be enrolled.

EXCEPTIONS.

First bill of exceptions.

The plaintiff, to support the issue upon his part above joined, produced and read in evidence to the jury the original offer or question of insurance proposed by the said Lawrence and Poindexter, by their agents John H. Ladd & Co., to the defendants, with their answer, and the acceptance of the same; the said paper being a printed form prepared and kept in blank at the office of the defendants, and filled up for the occasion, hereto annexed:

No. 1.

Offer for Insurance.

To the President and Directors of the Columbian Insurance Company of Alexandria:

What premium will you ask to insure the following property, belonging to Lawrence and Poindexter, for one year, against loss or damage by fire? On their stone mill, four stories high, covered with wood, situate on an island about one mile from Fredericksburg, in the county of Stafford, the mill called Elba Mill; seven thousand dollars is wanted. Not within thirty yards of any other building, except a corn house, which is about twenty yards off.

$7,000. JOHN H. LADD & Co., *Agents.*

Answer, 150.

Accepted. JOHN H. LADD & Co., *Agents.*
9th April, 1823.

N. B. Persons offering for insurance are requested to be particular in their descriptions, more especially of what materials the walls and roofs of each building are constructed. as well as the construction of the buildings contiguous; by whom the buildings are occupied, and for what purpose, and where situate.

Each building to be separately valued.

When goods are offered, the place of deposite to be described, and whether they are of the description denominated hazardous, and if any manufactory is carried on on the premises.

The policy of insurance, regularly done and executed by the defendants in pursuance of the said question, answer, and acceptance, together with the printed fundamental rules of the said Columbian Insurance Company, referred to in the said policy, and endorsed thereon, and an assignment from Lawrence and Poindexter to William I. Roberts, also endorsed on said policy, all hereto annexed.

[See the said policy and fundamental rules before copied on pages 7 and 11.]

Assignment of Policy.

We, Joseph W. Lawrence and Thomas Poindexter, under the firm of Lawrence and Poindexter, for value received, do hereby assign the within policy of insurance on a four story stone mill called the Elba Mill, in the county of Stafford, and State of Virginia, to Wm. I. Roberts, to whom the said property has been conveyed in trust for certain purposes. Witness our hands and seals this 21st February, 1824.

JOSEPH W. LAWRENCE. [SEAL.]
THOS. POINDEXTER. [SEAL.]

Witness, SAMUEL HARRISON,
JAMES WILLIAMS.

The printed rates of annual premiums, published by the defendants in the newspapers, and kept posted on the wall in a conspicuous part of their office, hereto annexed:

Rates of Insurance.

Rates of annual premiums to be paid for insurance, viz.:

No. 1. Hazards of the first class, 25 to 35 cents per annum per $100, viz., brick or stone buildings covered with tile, slate, or metal; furniture or merchandise not hazardous contained in such buildings.

No. 2. Hazards of the second class, 37½ to 50 cents per annum per $100, viz., buildings having the four walls of brick or stone, and covered with boards and shingles; furniture and merchandise not hazardous, contained in such buildings. Hazardous goods, viz., hemp, flax, oil, pitch, tar, rosin, turpentine, spirits turpentine, aquafortis, saltpetre, tallow, distilled spirits, or other hazardous goods, in buildings of first class.

No. 3. Hazards of the third class, 50 to 100 cents per annum per $100, viz. buildings constructed partly with brick or stone, and partly with wood, or having either of the four walls of frame work filled in with brick; furniture or merchandise not hazardous contained in such buildings. Hazardous goods enumerated in No. 2, or other hazardous goods in buildings of second class.

No. 4. Hazards of the fourth class, 50 to 150 cents per annum per $100, viz., timber or slight buildings covered with shingles or boards; furniture or merchandise not hazardous contained in such buildings. Hazardous goods enumerated in No. 2, or other hazardous goods in buildings of third class. For sums not exceeding $10,000 on one risk; ships in port, and their cargoes, ships building or repairing, also craft with goods on board, may be insured against fire. Larger sums may be insured by special agreement with

the board, as far as $15,000. All buildings in contiguity to hazardous buildings, or in other respects disadvantageously situate, will be charged an extra premium.

The rules may also, in some cases, be proportionately moderated upon timber buildings in the country, or when standing singly and detached, or attended with circumstances of peculiar security.

Soap boilers, tallow chandlers, brewers, maltsters, bakers, rope makers, sugar refiners, distillers, chemists, varnish makers, paper makers, stable keepers, tavern keepers, china, glass, or earthenware sellers, oil and colourmen, printers, coopers, carpenters, cabinet makers, coach makers, boat builders, ship chandlers, or apothecaries, or any manufactory which requires fire heat, or buildings used for theatrical or other public exhibitions, are deemed extra hazardous, and the rate upon such risks will be proportionally increased.

A letter from Lawrence and Poindexter to the defendants, received at Alexandria, by post, from Fredericksburg, on the 17th February, 1824, hereto annexed:

Notice of burning of Insured Premises.

FRED'G, *Feb'y 16th*, 1824.

To the President, Directors & Co. of the Columbian Insurance Company of Alexandria:

GENTLEMEN: We regret that we have now to inform you of the total destruction of our mill by fire on the night of the 14th inst., which was insured in your office, the particulars of which we will forward you as soon as we can prepare the necessary documents, as laid down in the conditions accompanying the policy.

Respectfully, LAWRENCE & POINDEXTER.

The affidavit of the said Lawrence and Poindexter, with the certificate of Murray Forbes, hereto annexed:

Affidavit of Assured.

We hereby certify, that, by the burning of our mill, situated on an island in the county of Stafford, about one mile from the town of Fredericksburg, and State of Virginia, called the Elba Mill, four stories high, the walls of stone, and covered with wood, on which seven thousand dollars was insured by us in the office of the Columbian Insurance Company of Alexandria on the 9th day of April last, per policy No. 279, and which was destroyed by fire on the night of Saturday last the 14th instant, we lost or were damaged at least twelve thousand dollars, exclusive of the contents of the said mill. We are entirely ignorant of the circumstances which occasioned the fire. And we further certify, that we have no other insurance, directly or indirectly, on the aforesaid property, except the above mentioned.

Witness our hands this 17th day of February, 1824.

JOSEPH W. LAWRENCE.
THOS. POINDEXTER, Jun.

COMMONWEALTH OF VIRGINIA, *Stafford county, to wit*:

Joseph W. Lawrence and Thomas Poindexter this day personally appeared before me, a justice of the peace for the said county, and made oath

in due form, that the above certificate contains the truth, to the best of their knowledge and belief.

Given under my hand this 17th day of February, 1824.

MURRAY FORBES.

Certificate of M. Forbes

I, Murray Forbes, a magistrate duly commissioned in and for the county of Stafford and State of Virginia, do hereby certify, that I am acquainted with Joseph W. Lawrence and Thomas Poindexter; that the fire orginated in their mill, burnt on the night of the 14th instant, by accident, or without fraud or design on their part, as far as I know or believe; and that the damage or loss they sustained by the said fire is at least ten thousand dollars. And I further certify, that the said mill was not within thirty yards of any other building, except a corn house, which was about twenty yards off.

Given under my hand this 17th day of February, 1824.

MURRAY FORBES.

Affidavit of T. Sedden.

The affidavits of Thomas Seddon and James Vasse, hereto annexed:

I, Thomas Seddon, of the town of Fredericksburg, in the county of Spotsylvania, and State of Virginia, do hereby certify, that I am well acquainted with the mill called and known by the name of the Elba Mill, owned and occupied by Joseph *I.* Lawrence and Thomas Poindexter, situate on an island in the county of Stafford, about one mile from the town of Fredericksburg; that the said mill was built of stone, four stories high, and covered with wood; that between 10 and 11 o'clock on Saturday night, the 14th instant, I was alarmed by the cry of fire, which I soon ascertained to the mill aforesaid; that I have since viewed the ruins, and I am of opinion that it would require at least ten thousand dollars to rebuild the same, and restore the proprietors in the situation they were in previous to the said fire; that I have no knowledge or idea how the fire originated.

Given under my hand this 17th day of February, 1824.

THOMAS SEDDON.

COMMONWEALTH OF VIRGINIA, *Stafford county, to wit:*

Thomas Seddon this day personally appeared before me, one of the commonwealth's justices of the peace of the county aforesaid, and made oath to the truth of the foregoing certificate, signed by his hand.

Given under my hand this 17th February, 1824

MURRAY FORBES.

Affidavit of J. Vasse.

I, James Vasse, of the town of Falmouth, in the county of Stafford, and State of Virginia, do hereby certify, that I am well acquainted with the mill called and known by the name called Elba Mill, owned and occupied by Joseph W. Lawrence and Thomas Poindexter, situate on an island in the county of Stafford, and about one mile from the town of Fredericksburg; that the said mill was built of stone, four stories high, and covered with shingles; that between the hours of 10 and 11 o'clock on Saturday night, the 14th current, I was alarmed by the cry of fire, which I soon ascertained to be the mill aforesaid; that I have since viewed the ruins, and

I am of opinion that it will require the sum of ten thousand dollars, or thereabouts, to restore the proprietors to the situation they were in previous to the said fire. Further, that I have no knowledge whatever how the fire originated.

Given under my hand this 17th day of February, 1824.

JAMES VASSE.

COMMONWEALTH OF VIRGINIA, *Stafford county, to wit:*

James Vass this day personally appeared before me, one of the commonwealth's justices of the peace of the county aforesaid, and made oath to the truth of the foregoing certificate, signed by his hand.

Given under my hand this 17th day of February, 1824.

MURRAY FORBES.

And it is admitted that all these affidavits and certificates were laid before the board of directors of the said Columbian Insurance Company, by Anthony Buck, the attorney of Lawrence and Poindexter, on the 20th February, 1824, as the preliminary proof of the loss claimed under the said policy.

Proceedings of Board of Directors of Columbian Insurance Company, respecting the claim of Lawrence and Poindexter.

Extracts from the minutes of the proceedings of the said Board of Directors touching the said claims hereto annexed.

No. 7.

Extracts from the minute book of the Columbian Insurance Company of Alexandria:

Proceedings at a call board, Friday, 20th February, 1824.

Lawrence and Poindexter's claim, made by them this day, by their attorney, Anthony Buck, with the policy and certificates of loss by fire on policy No. 279.

On the application of Anthony Buck, leave is given to Joseph W. Lawrence and Thomas Poindexter to assign to William I. Roberts policy No. 279, effected in this office, without prejudice to any defence which this office may have against the payment of the sum insured, or to the claim of John H. Ladd and Co., under their attachment heretofore served on the president of this company.

SATURDAY, 13*th March*, 1824.

Ordered, That the Secretary address a letter to John Scott, to require the title of Lawrence and Poindexter to the Elba Mill.

THURSDAY, 1*st April*, 1824.

The following papers were this day received, to wit: a letter from John Scott, esq., Fredericksburg, covering copies of a deed from William and George Winchester to Joseph Howard and Joseph Lawrence; an agreement between Joseph Howard and Joseph Lawrence; and an agreement between Joseph Lawrence and Thomas Poindexter, jun.

FRIDAY, 16*th April*, 1824.

In the case of Lawrence and Poindexter. Ordered, That a copy of the mortgage to the banks, proof of the execution of the contract between Lawrence and Poindexter on the day it bears date, and a copy of the notes in the bank, be required.

THURSDAY, 22*d April*, 1824.

Lawrence and Poindexter. The following papers were presented by R. I. Taylor, esq., enclosed to him by Mr. John Scott, Fredericksburg: deed of trust from Joseph Howard and Mary his wife, and Joseph W. Lawrence to William J. Roberts, for the benefit of the banks, dated 13th May, 1814; an agreement between Joseph W. Lawrence and Thomas Poindexter, dated 28th Nov. 1822; a copy of a note drawn by Howard and Lawrence, dated 10th March, 1824, to the Farmers' Bank of Va., at Fredericksburg, for $1,800; a copy of another note, dated 5th March, 1824, drawn by the same, to the bank of Virginia, at Fredericksburg, for $4,187.

SATURDAY, 26*th June*, 1824.

Walter Jones, esquire's opinion having been submitted to a called board this day, on motion of Mr. Mandeville, it was resolved, that the claim of Lawrence and Poindexter be resisted, and that the secretary furnish them with a copy of this resolution.

WEDNESDAY, 11*th Nov.*, 1824.

Will the board now enter into a compromise with John Scott, esq., for the claim of Lawrence and Poindexter on this office, it being perfectly understood that an agreement to enter into a compromise is not to be considered as an admission of the claim? Yes.

THURSDAY, 18*th November*, 1824.

The board having duly considered the case of Lawrence and Poindexter, decline making any compromise at this time, and the secretary is directed to inform Mr. Scott of their determination.

FRIDAY, 10*th December*, 1824.

A communication from John Scott, esq., of Fredericksburg, was received; whereupon it is ordered, that a board be called for to-morrow, at 12 o'clock, to receive said John Scott's proposals for an arrangement in the case of Lawrence and Poindexter.

SATURDAY, 11*th December*, 1824.

On application of John Scott, esq., it is agreed to receive propositions for an arrangement between John Scott and this office, in the case of Lawrence and Poindexter, without prejudice to either of the parties concerned. John Scott, esq. has this day proposed to settle his claim against this office, by receiving from them fifty cents in the dollar, in full for said claim. Will the board now agree to pay said Scott fifty cents? They will not.

The opinion of Walter Jones, counsel of the defendants, referred to in said minutes, hereto annexed:

No. 8.

Opinion of Defendant's Counsel.

Claim of Lawrence and Poindexter, as stated by the Columbian Insurance Company of Alexandria.

An equitable title, in general, is doubtless an insurable interest against fire; but it seems that the interest in this case was so incumbered with liens and precedent conditions, as to make the legal estate not worth the calling for on the part of the insured; whilst, on the other hand, their circumstances were such as, in all probability, to make any suit against them for a specific execution of the contract, or for compensation for damages, fruitless and unproductive; so that, to any practical effect or purpose, the insured were unable to call for the legal estate by performing the contract of sale, and consequently the vendor had no motive to throw the legal estate upon them by a compulsory execution of such contract. How the insurance may be affected by such a state of facts, is a question entirely at large and undetermined by authority; and if there were any insurable interest, it might be matter of serious doubt, under the peculiar circumstances of the property and the parties, to what degree the general terms in which the description of the estate to be insured is given, (unlimited by any specification of the quality of the estate, or of the *value* or *quantity* of the *interest*,) involved misrepresentation or concealment.

Whether, in the description of a *stone* building, covered with *wood*, the *gables* be necesssarily understood to be a part of the masonry, is a question of art belonging to architects or house builders, and depending upon the common use and understanding of the terms connected with that art. How, upon these principles, would a contract to build a house of *brick* or *stone*, *covered* with *wood*, be understood? Would the undertakers be bound to run up the gables with brick or stone? If that question be answered in the affirmative, (as I am informed, and indeed have no doubt it should be,) then the omission in this case to disclose the fact of *timber gables* is a concealment of a material fact, and the unqualified description given of a *stone* mill a material misrepresentation, which avoids the policy.

W. JONES.

June 18, 1824.

Evidence of Title.

And the plaintiffs then produced and read in evidence to the jury several deeds and agreements, showing the interest and title of Lawrence and Poindexter in the insured premises, all which deeds and agreements are hereto annexed.

No. 9.

Deed from Mortimer to S. Winchester.

This indenture, made this fifteenth day of July, in the year of our Lord one thousand seven hundred and ninety-nine, between Charles Mortimer, of the one part, and Stephen Winchester, of the other part, witnesseth, that for and in consideration of the rents and agreements hereinafter reserved, and which, on the part and behalf of the said Winchester, and his executors and assigns, are to be paid and performed, he, the said Charles Mortimer,

has leased and to farm letten, and by these presents doth lease and to farm let unto the said Winchester, his executors and assigns, all that tract or parcel of land lying on the river Rappahannock, about one mile above the town of Fredericksburg, formerly called Vickary's Island, but now known by the name of Mortimer's Island, with the appurtenances, unto the said Winchester, his executors and assigns, from henceforth for and during the natural life and lives of him the said Stephen, aged about 38 years, of Palemon Winchester, his son, aged about 5 years, and of Rebecca Eliza Winchester, his daughter, aged about 7 years, and of the survivor or longer liver of them, renewable for ever by the said Winchester, his heirs, executors, or assigns, naming some other person or persons upon the death of either of those before named, and so continuing to name upon the death of any party named, for ever; the said lease to commence from the first day of January, one thousand eight hundred; he the said Winchester, his executors, heirs, or assigns, yielding and paying therefor, yearly and every year, upon the last day of December, the sum of eighty pounds specie, during the said term, unto the said Charles Mortimer, his heirs, executors, or assigns. And the said Winchester doth, for himself, his heirs, executors, and assigns, covenant and agree with the said Mortimer, his heirs and assigns, in manner following: he the said Winchester shall and will well and truly pay or cause to be paid unto the said Mortimer, his heirs, executors, or assigns, the said yearly rent of eighty pounds specie, as aforesaid, free and clear of all taxes, demands, or deductions of any kind whatsoever: provided always, nevertheless, that if it shall happen that the said yearly rent hereby reserved, or any part of it, shall be behind and unpaid by the space of thirty days next over or after the day of payment, whereon the same ought to be paid as aforesaid, being lawfully demanded, then and in that case it shall and may be lawful to and for the said Mortimer, his heirs, executors, or assigns, into the said premises hereby leased, or any part thereof, in the name of the whole, to re-enter, and the same again to have again, retain, repossess, and enjoy, as in his and their first and former estate or estates, any thing herein contained to the contrary notwithstanding. And the said Mortimer covenants, for himself, his heirs, executors, and assigns, that it shall be lawful for the said Winchester, his heirs, executors, and assigns, (paying the rent herein before reserved,) peaceably and quietly to have, hold, and enjoy all and singular the said leased premises, with the appurtenances, during the said term of three lives, renewable for ever, hereby demised, with full power and authority to raise stone, dig canals, build mills, and make any and whatever improvements thereon that the said Winchester, his heirs, executors, or assigns may think proper, in the same way and manner as if the absolute fee-simple estate was in the said Winchester: provided always, that if the said Winchester, his heirs, executors, or assigns, commit no wilful waste thereon. And the said Mortimer hereby covenants with the said Winchester, that he the said Mortimer, his heirs, executors, or assigns shall, upon the request of the said Winchester, his heirs, executors, or assigns, and their expense, renew the said lease at the expiration of the said lives, or any of them, upon the said terms and conditions as are herein contained, and will renew the same for ever; and that the said Winchester, his executors or assigns, shall hold the same without any molestation or interruption whatsoever of or by him the said Mortimer, his heirs, executors, or assigns, or of or by any other person or persons lawfully or equitably claiming, or to claim by, from or, under him,

them, or any of them. In witness whereof the parties have hereunto affixed their hands and seals, the day and year first above written.

CHARLES MORTIMER. [L. S.]
S. WINCHESTER. [L. S.]

At a District Court held at Fredericksburg, October the 4th, 1799, this indenture of lease was acknowledged by the said Charles Mortimer and Stephen Winchester, and ordered to be recorded.

Teste:

JOHN CHEW, *C. F. D. C.*

A copy.—Teste:

R. S. CHEW, *Cl. Spot. Sup. Court.*

No. 10.

Deed from S. Winchester to R. Winchester.

This indenture, made this nineteenth day of December, anno Domini eighteen hundred and one, between Stephen Winchester, of the town of Fredericksburg, and State of Virginia, of the one part, and Richard Winchester, of the county of Spotsylvania, and State aforesaid, of the other part, witnesseth, that the said Stephen Winchester, for and in consideration of the sum of five shillings, lawful money of this commonwealth, to him in hand paid, at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, and sold, and by these presents doth grant, bargain, and sell unto the said Richard Winchester one undivided third part of all that tract or parcel of land lying in the river Rappahannock, about one mile from the town of Fredericksburg aforesaid, formerly called Vacary's Island, lately known by the name of Mortimer's Island, but now Winchester's, and purchased by the said Stephen Winchester of a certain Charles Mortimer, and conveyed to the said Stephen Winchester by a deed, bearing date the fifteenth day of July, seventeen hundred and ninety-nine, and of record in the clerk's office of the District Court of Fredericksburg: to have and to hold the said one undivided third part of the tract or parcel of land before mentioned unto the said Richard Winchester, his heirs and assigns for ever, in as full and ample a manner as the said tract or parcel of land is held by the said Stephen Winchester, under the conveyance of the said Charles Mortimer to him. In witness whereof the said Stephen Winchester hath hereunto set his hand and affixed his seal, the day and year first above written.

S. WINCHESTER. [L. S]

Signed, sealed, and delivered in presence of
SAM. HOWARD.
R. D. THROCKMORTON.

At a District Court held at Fredericksburg, 4th May, 1802, this indenture for land was acknowledged in the office by Stephen Winchester, and ordered to be recorded.

Teste:

JOHN CHEW, *C. F. D. Court.*

A copy.—Teste:

R. S. CHEW, *Cl. Spot. Sup. Court.*

No. 11.

Deed from S. Winchester to Joshua Howard.

This indenture, made this nineteenth day of December, anno Domini eighteen hundred and one, between Stephen Winchester, of the town of Fredericksburg, and State of Virginia, of the one part, and Joshua Howard, of Frederick county, in the State of Maryland, of the other part, witnesseth, that the said Stephen Winchester, for and in consideration of the sum of five shillings, lawful money of this commonwealth, to him in hand paid at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, and sold, and by these presents doth grant, bargain, and sell unto the said Joshua Howard, one undivided third part of all that tract or parcel of land lying in the river Rappahannock, about one mile above the town of Fredericksburg aforesaid, formerly called Vacary's Island, lately known by the name of Mortimer's, now Winchester's Island, and purchased by the said Stephen Winchester of a certain Charles Mortimer, and conveyed to the said Stephen Winchester by a deed bearing date the fifteenth day of July, seventeen hundred and ninety-nine, and of record in the clerk's office of the District Court of Fredericksburg: To have and to hold the said undivided third part of the tract or parcel of land before mentioned unto the said Joshua Howard, his heirs and assigns for ever, in as full and ample a manner as the said tract or parcel of land is held by the said Stephen Winchester under the said conveyance from the said Charles Mortimer to him. In witness whereof, the said Stephen Winchester hath hereunto set his hand and affixed his seal, the day and year first above written.

S. WINCHESTER. [L. S.]

Signed, sealed, and delivered in presence of
SAMUEL HOWARD,
R. D. THROCKMORTON.

At a District Court held at Fredericksburg, the 4th day of May, 1802, this indenture for land was acknowledged by the said Stephen Winchester, and ordered to be recorded.

Teste: JOHN CHEW, *C. F. D. C.*
A copy.—Teste: R. S. CHEW, *Cl. S. S. Court.*

No. 12.

Deed of Mortgage from R. & S. Winchester to Joshua Howard.

This indenture, made this ninth day of May, in the year of our Lord one thousand eight hundred and six, between Richard Winchester and Stephen Winchester, of the one part, citizens of Virginia, and Joshua Howard, a citizen of the State of Maryland, of the other part, witnesseth, that whereas a partnership in trade has heretofore been carried on under the firm of Winchester, Howard & Co., consisting of the said Richard and Stephen Winchester and the said Joshua Howard; and whereas, in the course of the said trade, the said Joshua Howard has made advances for the said company beyond his proportion to a considerable amount, and has also become bound and security for the said company, and is liable for several sums of money far beyond his proportion, and to very considerable amount; that is to say, including the balance due him and the securityships and liability as aforesaid, to the amount of forty thousand dollars; and the said R. & S. Winchester being desirous to secure and save harmless the said Joshua Howard

and his heirs from the said securityships, and also to secure to and pay him the large balance actually due him, as by a schedule hereto annexed: Now this indenture witnesseth, that, for and in consideration of one dollar to them in hand paid by the said Joshua Howard, at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged by the said R. & S. Winchester, have granted, bargained and sold, and by these presents do grant, bargain, and sell unto the said Joshua Howard, his heirs and assigns for ever, two thirds of the island called and known by the name of Mortimer's island, together with two thirds of the mills thereon, with all the buildings, privileges, and advantages thereunto belonging or in anywise appertaining thereto, (the same being the whole of their interest in the said island, mills, and privileges, the other being the property of the said Joshua Howard, and the whole of which is held under a lease from Charles Mortimer,) together with the following slaves: Jane, and her child Beverly, Hess, Jannett, Ned, Cuffy, Tony, his wife and child, Isaac, Jack, Nancy, and Violett, together with their future increase; together with thirteen horses, one wagon, one cart, with all their necessary gears for both, and all the stock and plantation utensils on the said island being, or in any wise appertaining thereto; also, one house and lot at present occupied by Stephen Winchester as a dwelling-house, one house and lot occupied by John S. Willford & Co. as a store, and R. & S. Winchester as a counting-house, and one lot or square on the banks of Rappahannock river, on which stands a cooper shop, one lot on which stands a bake house and flour house; also, one thousand and thirty acres of land in the county of Spottsylvania, purchased by S. Winchester of William S. Stone; together with eight feather beds and furniture, all the plate, household and kitchen furniture of every kind, in the joint and separate possession of the said R. & S. Winchester at the date of these presents. To have and to hold the said several tracts of land, lots, and horses, negro slaves, and personal property, to the said Joshua Howard, his heirs and assigns for ever; but upon this special provision, that, provided the said Richard and Stephen Winchester shall, on or before the 25th day of December, which shall be in the year eighteen hundred and six, pay and satisfy to the said Joshua Howard the said sums of money for which he is security and liable, and also the balance due as aforesaid, with the interest thereon at the rate of six per cent. per annum, and shall completely exonerate him from all liability and securityship for them or on their accounts, that then these presents shall be void and of no effect; otherwise to remain in full force and virtue in law.

Signed, sealed and delivered. R. WINCHESTER, [SEAL.]
S. WINCHESTER. [SEAL.]

This sum due you as J. Howard & Son, with interest, -	$9,669 36
This sum due you, - - - - -	5,000 00
This sum due you, being liable to W. Winchester for the same, and interest, - - - -	21,106 04
This sum due P. Hoffman & Son, for which you are liable, - - - - - -	1,097 07
Sundry other notes and accounts due, as by Winchester, Howard, & Co. - - - -	3,127 41
	$40,000 00

R. & S. WINCHESTER.

At a district court held at Fredericksburg on the 30th day of September, 1806, this indenture for lands, slaves, and personal property, from Richard and Stephen Winchester, of the one part, and Joshua Howard, of the other part, was acknowledged by the said Richard and Stephen, and ordered to be recorded.

Teste: ROBERT HENING, *C. F. D. C.*

A true copy from the record.

In testimony whereof, I have hereto set my hand, and affixed the seal of my office, this 1st day of December, 1825, and in the 50th year of the commonwealth.

[L S.] ROBERT S. CHEW, *C. S. S. C.*

No. 13.

Deed from J. Howard to William and George Winchester.

This indenture, made this 27th day of January, in the year of our Lord one thousand eight hundred and thirteen, between Joshua Howard, of Frederick county, in the State of Maryland, of the one part, and William Winchester and George Winchester, of the city of Baltimore, in the same State, of the other part. Whereas the said Joshua Howard, on the 20th day of September, in the year 1809, by his indenture did convey unto William Winchester, of the city of Baltimore, (the father of the above named William and George) an island, with a mill thereon, in the river Rappahannock, about one mile above the town of Fredericksburg, in the State of Virginia, commonly known by the name of Winchester's Island, (formerly Mortimer's,) which island had been conveyed to the firm of Winchester, Howard, & Co. by Charles Mortimer, by deed duly recorded, reserving a rent of eighty per annum, and, by a subsequent conveyance from Richard Winchester and Steven Winchester, (who, together with the said Howard, composed the aforesaid firm,) to the said Joshua Howard, the said island, with its appurtenances, became the sole property of the said Joshua Howard, as by reference to the several conveyances on record will more fully appear; and whereas the above mentioned conveyances from the said Joshua Howard to the said William Winchester hath not been duly recorded within the time limited by law; and whereas the said William Winchester hath departed this life, having first duly executed his last will and testament, and thereby devised to the above mentioned William and George Winchester all his real estate, and, for the purpose of securing unto the said William and George the premises and estate so as aforesaid conveyed to the said William Winchester, the elder, in his lifetime, these presents are executed: Now this indenture witnesseth, that the said Joshua Howard, for and in consideration of the premises, and of the sum of five dollars to him in hand paid by the said William Winchester and George Winchester, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath, and by these presents doth grant, bargain, sell, assign, transfer, set over, and confirm unto the said William Winchester and George Winchester, all the aforesaid island, called Winchester's Island (formerly Mortimer's Island,) with the privileges, advantages, and appurtenances thereto belonging. To have and to hold the said island, with its appurtenances, unto the said William Winchester and George Winchester, their heirs, executors, administrators, and assigns, for ever, and to their only proper use, benefit, and behoof, for ever; and to and for no other use, intent, or purpose what-

soever; subject, nevertheless, to the payment of the said yearly rent of eighty pounds, reserved and made payable therefrom. And the said Joshua Howard, for himself, his heirs, executors, and administrators, doth hereby covenant, grant, promise, and agree, to and with the said William and George Winchester, that he the said Joshua Howard shall and will for ever hereafter warrant and defend the aforementioned island, called Winchester's Island, and the appurtenances, unto the said William and George Winchester, and their heirs and assigns, against all manner of persons claiming by, from, through, or under him the said Joshua Howard, his heirs or assigns, and all claims whatsoever, except the aforesaid yearly rent.

In witness whereof, the said Joshua Howard hath hereto set his hand and seal the day and year first above written.

JOSHUA HOWARD. [SEAL.]

Signed, sealed, and delivered in presence of Edward Johnson, Edward Philan, John Elliott, John Hargrove, Michael Burdee.

STATE OF MARYLAND, *city of Baltimore, to wit:*

Be it remembered, that on this 27th day of January, eighteen hundred and thirteen, personally appeared before me, Edward Johnson, mayor of the city of Baltimore, the within named Joshua Howard, and acknowledged the foregoing to be his act and deed, according to the true intent and meaning thereof.

In testimony whereof, I have hereunto signed my name and affixed the seal of the corporation of the city of Baltimore, the day and year above written.

[L. S.] EDWARD JOHNSON,
Mayor of the city of Baltimore.

At a court held for Stafford county, on the 8th day of March, 1813, the foregoing indenture, between Joshua Howard of the one part, and William Winchester and George Winchester of the other part, appearing to the satisfaction of the court, by the certificate of the mayor of the city of Baltimore, to have been legally acknowledged before him, is ordered, together with said certificate, to be recorded.

Teste: V. PEYTON, *C. S. C.*

No. 14.

Deed from W. and G. Winchester to Howard and Lawrence.

This indenture, made this twenty-third day of September, in the year of our Lord one thousand eight hundred and thirteen, between William Winchester and George Winchester, of the city of Baltimore, in the State of Maryland, of the one part, and Joseph Howard and Joseph Lawrence, of the town of Fredericksburg, in the State of Virginia, of the other part. Whereas Joshua Howard, of Frederick county, in the State of Maryland, by his indenture bearing date on the 20th day of September, eighteen hundred and nine, did convey unto William Winchester, of the city of Baltimore, (the father of the above named William and George Winchester,) an island, with a mill thereon, in the river Rappahannock, about one mile above the town of Fredericksburg, in the State of Virginia, commonly known by the name of Winchester's Island (formerly Mortimer's,) which

island had been conveyed to the firm of Winchester, Howard and company, by Charles Mortimer, by deed duly recorded, reserving a rent of eighty pounds per annum, and, by a subsequent conveyance from Richard Winchester and Stephen Winchester (who, together with the said Joshua Howard, composed the aforesaid firm) to the said Joshua Howard, the said island, with its appurtenances, became the sole property of the said Joshua Howard, as by reference to the several conveyances on record will more fully and at large appear; and whereas the above mentioned conveyance from Joshua Howard to the said William Winchester, the elder, was not recorded within the time limited by law, and the said William Winchester, the elder, having departed this life, and by his last will and testament devised all his real estate to the said William and George Winchester, the said Joshua Howard, for the purpose of securing and confirming unto the said William and George Winchester the premises and estate so as aforesaid conveyed to the said William Winchester, the elder, in his lifetime, did, by his indenture, bearing date on the 27th day of January, 1813, assign, confirm, and make over the same unto the said William and George Winchester, their heirs and assigns, as by reference to the said indenture, recorded among the land records of Stafford county, in the State of Virginia, in liber A A, folio 367, will more fully and at large appear; and whereas the said William Winchester the elder, in his lifetime, did execute and deliver a conveyance for the above mentioned estate unto the said Joseph Howard and Joseph Lawrence, for the consideration of the sum of ten thousand dollars, the payment of which was secured by a mortgage clause inserted in said deed, which conveyance the said Joseph Howard and Joseph Lawrence also neglected or omitted to have recorded according to law; and the said William and George Winchester have, therefore, agreed to execute this deed of confirmation, for the purpose of securing and conveying unto the said Joseph Howard and Joseph Lawrence all the estate and premises, so as aforesaid conveyed unto them by the said William Winchester the elder, in his lifetime. Now this indenture witnesseth, that the said William Winchester and George Winchester, for and in consideration of the premises, and of the sum of six thousand six hundred and ninety-five dollars, to them in hand paid (or secured to be paid) by the said Joseph Howard and Joseph Lawrence, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have, and by these presents do grant, bargain, sell, assign, transfer, and make over unto the said Joseph Howard and Joseph Lawrence all that the aforesaid island called Winchester's Island, formerly Mortimer's, with the buildings and improvements thereon, and the privileges, advantages, and appurtenances thereto belonging, or in anywise appertaining; and also all the estate, right, title, claim and interest of the said William Winchester and George Winchester, or either of them, therein or thereto. To have and to hold the same and every part and parcel thereof, unto the said Joseph Howard and Joseph Lawrence, their heirs, executors, administrators and assigns, as tenants in common, in as full, large, ample and beneficial a manner as the said William Winchester and George Winchester might or could have held and enjoyed the same by any ways or means whatsoever; subject, nevertheless, to the payment of the said yearly rent of eighty pounds, reserved and made payable therefrom, and subject also to the payment of the sum of six thousand six hundred and ninety-five dollars, the balance of the purchase money, now due and owing to the said William and George

Winchester, agreeably to certain promissory notes executed by the said Joseph Howard and Joseph Lawrence, it being expressly understood and declared that the said sum of six thousand six hundred and ninety-five dollars, and all interest which may arise or grow due thereon, are charged upon and made payable out of said land, and is hereby declared to be a lien upon the said island and premises, in the same manner as if a mortgage had been executed therefor by the said Joseph Howard and Joseph Lawrence to the said William and George Winchester. In witness whereof, the said William Winchester and George Winchester have hereunto set their hands and seals, the day and year first above written.

W. WINCHESTER, [L. S.]
GEO. WINCHESTER. [L. S.]

Signed, sealed, and delivered in the presence of Edward Johnson, Samuel Young, P. Welch, William Matthews, John Hargrove.

STATE OF MARYLAND, *city of Baltimore, to wit:*

Be it remembered, that, on this 23d day of September, 1812, personally appeared before me, Edward Johnston, mayor of the city of Baltimore, the aforesaid William Winchester and George Winchester, and acknowledged the aforegoing deed or instrument of writing to be their act and deed, according to the true intent and meaning thereof, and the act of Assembly in such case made and provided.

In testimony whereof, I hereto signed my name, and affixed the seal of the corporation of the city of Baltimore, the day and year above written.

[L. S.] EDW'D. JOHNSTON,
Mayor of the city of Baltimore.

At a court held for Stafford county the 9th day of May, 1814, the foregoing deed of bargain and sale between William Winchester and Geo. Winchester, of the one part, and Joseph Howard and Joseph Lawrence, of the other part, appearing to the satisfaction of the court to have been legally acknowledged before the mayor of the city of Baltimore, is ordered, together with the certificate of said mayor, to be recorded.

Teste:

V. PEYTON, *C. S. C.*

VIRGINIA, *Stafford county, to wit:*

As clerk of the county court of Stafford, in the State of Virginia aforesaid, I certify the foregoing to be true copies from the records of my office.

In testimony whereof, I hereto set my hand and affix the seal of my said office, at the court house, this 29th day of November, anno Domini one thousand eight hundred and twenty-five, in the fiftieth year of the commonwealth.

[L. S.] JNO. M. CONWAY.

STATE OF VIRGINIA, *Stafford county, to wit:*

I, Hancock Eustace, presiding justice of the court of Stafford county, in the State aforesaid, do hereby certify that the attestation hereto annexed, made by John M. Conway, clerk of the said court, is in due form, and by

the proper officer appointed by the laws of the said State for that purpose; and that full faith and credit is due thereto in every court or office in the United States.

Given under my hand, at the county of Stafford, in the State of Virginia aforesaid, this 29th day of November, in the year eighteen hundred and twenty-five, and of the independence of the United States the fiftieth.

HANCOCK EUSTACE.

STATE OF VIRGINIA, *Stafford county, to wit:*

I, John M. Conway, clerk of the county court of Stafford, in the State aforesaid, do hereby certify that Hancock Eustace, whose certificate is hereto annexed, is presiding justice of the said county of Stafford, in the State of Virginia, duly commissioned and qualified to the said office, according to the constitution and laws of the said State.

Given under my hand, this 29th day of November, eighteen hundred and twenty-five.

JOHN M. CONWAY.

No. 15.

Agreement between Jos. Howard and Jos. W. Lawrence.

Memo. of an agreement made between Joseph Howard and Joseph W. Lawrence, this 22d July, 1818. Jos. W. Lawrence to take the island, mill and property thereon, at the price of thirty thousand dollars, and to allow to Jos. Howard one hundred barrels of the growing crop of corn, fifty barrels thereof to be delivered to said Howard for the use of his family, and the remaining fifty to be placed to his credit on the books of Howard and Lawrence. The above $30,000 to include the land, mill, and dwelling house, and all other improvements on the island, and all the joint property thereon or thereunto belonging or appertaining. The said Lawrence to procure a release for $30,000 in debts due from Howard and Lawrence; and upon such release the said Jos. Howard to execute to said Lawrence a good and perfect title to his moiety of the said mill and above recited property, subject to the liens given the banks and Winchester, also the ground rent on the island; and, in the event of the said Lawrence failing to comply, or being unable to procure such release as above mentioned, then this contract to be void and of no effect. It is to be understood by the parties that the Winchester's claim, and a note given for the premium for insurance on the above property, amounts to be ascertained and taken from the $30,000, and the release will be for the balance of said $30,000. In witness whereof, we have hereunto set our hands and seals this day and date above named.

JOSEPH HOWARD. [SEAL.]
JOS. W. LAWRENCE. [SEAL.]

Signed, sealed and delivered in the presence of
JNO. LEDWIDGE.

No. 16.

Agreement between Jos. W. Lawrence and T. Poindexter, Jr.

Memorandum of an agreement between Joseph W. Lawrence and Thomas Poindexter, jun., to wit: Joseph W. Lawrence has agreed to sell one

half of his island and mills, with their appurtenances and incumbrances, as they now stand, to Thos. Poindexter, jr., for which the said Poindexter agrees to assume and take upon himself, mutually with the said Lawrence, the payment of the debts now due by the late firm of Howard & Lawrence to the Office of Discount and Deposite of the Bank of Virginia at Fredericksburg, and to the Office of Discount and Deposite of the Farmers' Bank of Virginia at Fredericksburg, for which a deed of trust was executed by said firm; and also the debt due by said firm to William Winchester, for which a mortgage was executed on the said island and mills, &c., and which said debt is now enjoined in the United States Court at Richmond, Virginia; and should the one half of the above debts not amount to the sum of ten thousand dollars at this time, then the balance is to be paid to the said Lawrence by the said Poindexter, as agreed between them. The said Lawrence is to obtain a deed from Joseph Howard for his half of the property, and is to convey to said Poindexter one half of his then interest in the said island and mills, with their appurtenances and rights, as he holds them. For the fulfilment of which stipulations or bargains the parties bind themselves, each to the other, in the penal sum of twenty thousand dollars. In testimony whereof they have hereunto put their hands and seals, this 28th day of November, 1822.

JOSEPH W. LAWRENCE. [SEAL.]
THOS. POINDEXTER, Jr. [SEAL.]

No. 17.

Agreement between J. W. Lawrence and T. Poindexter.

It is agreed between Joseph W. Lawrence and Thomas Poindexter, jr., joint owners of the island and mills late the property of said Lawrence, that they will work the island and mills in copartnership, at their expense and for their joint interest; and that, out of the first profits from the concern, Joseph W. Lawrence shall have the sum of five hundred dollars, in addition to the sum before stipulated, for half of the island and mills, before any profit is to be realised to the firm. And it is understood and agreed between us, that the net profits from the concern *is*, at all times, to be applied to the extinguishment of the debts for which the property is encumbered; if either of them should be pressed, either in part or in whole; and if neither is pressed, then to go to any object that may be agreed between us. And the aforesaid firm shall pay legal interest for any sum of money advanced by either party, over and above what the other may advance, for the purpose of working the mill for the time being. And it is agreed that we shall trade under the firm of Lawrence and Poindexter, and the establishment shall be called Elba Mills. It is understood and agreed by the parties, they are each to pay their individual expenses, &c. Given under our hands and seals this the 29th day of November, 1822.

JOSEPH W. LAWRENCE. [L. S.]
THOS. POINDEXTER, Jr. [L. S.]

Testimony of J. Sanderson.

The plaintiff then examined James Sanderson, a witness sworn in the cause, and proved by him that he was the secretary of the Columbian Insurance company at the time the insurance in question was made; and that, after the insurance was so made, that is to say, on the 20th day

of February, in the year 1824, the said papers, Nos. 5 and 6, were presented by the agents of the plaintiffs to the Columbian Insurance Company, with a view to entitle them to the payment of the claim for which this suit is brought. That the said secretary informed the agents of the plaintiffs that he would call a board, to decide whether the said claim would be paid. That the board was accordingly called, and the witness afterwards informed the agents of the said plaintiffs that the company would probably resist the payment of the said claim. That they did not consider that the interest which the plaintiff held in the said property at the time of the insurance was an insurable interest; and they were, moreover, under the impression that Poindexter, one of the plaintiffs, had set fire to the mill; and that they had not made a true and faithful representation of the state of the mill at the time the said insurance was made. That no objection was made at this, or any subsequent period, to the aforesaid preliminary papers. That the custom of the board of the said Insurance Company was, in case the claim for indemnity appeared to the board to be just, to refer the preliminary papers to their secretary, to see if they were regular; that in this case no reference of that sort was made. The claim itself was finally submitted to the counsel of the company, and, in the month of June, 1824, the counsel advised that the claim should be resisted. That the different orders and resolutions of the board, upon the subject of the said claim, are in the following words: (see No. 7). That, from the first presentation of the said papers in February till the passing of the final resolution in June, the claim was pending undetermined before the board, waiting for the advice of their counsel. That, as the engagements and absence of the counsel prevented an immediate decision, an arrangement was made with the agent of the plaintiffs, that, if the final resolution of the board should be to resist the claim, the suit should be put as forward on the docket as if brought to the intervening April term of the court, which commenced on the second Monday of April, 1824; in accordance with which arrangement the suit was docketed by consent at the November term then next ensuing. That all the annexed resolutions of the board, (No. 7,) purporting to be required, or intended to be communicated to the plaintiffs, or their agent, were regularly and duly communicated by the witness, as secretary of the board, accordingly. That these were the only communications which the said secretary was authorized by the board to make to the plaintiffs or their agent. That, according to the invariable usage of the board in the like cases, the sufficiency of the documents offered by way of preliminary proof of loss, as required by the ninth article of the printed rules annexed to the policy, was not to be considered by the board till the principle of the claim should have been admitted; and then the course was to submit such documents to the secretary for a special report on the same. That in this case the sufficiency of the said documents was never discussed or considered by the board, nor referred to the secretary. That it never was contemplated by the witness, nor, to his knowledge, by the board, to waive any compliance with the 9th article of the printed rules or proposals annexed to the policy; but, according to the ordinary course of business, the consideration of the documents offered under that article did not regularly come on till the claim should be admitted in principle. That the agent of the plaintiffs was present at some of the meetings of the board, in the interval between February and June, while the claim was pending and undecided. The witness was not present on all these occasions; but all that he heard of what passed between the said agent and the board on

such occasions turned upon questions relative to the fundamental objections to the claim, viz., the want of interest, the misrepresentation of the property insured, and the fraud in the loss; the regularity or irregularity of the documents of preliminary proof was not mentioned. The witness, upon the requisition of the plaintiffs, produced the opinion of counsel referred to in the last resolution, which is annexed (No. 8); but the said opinion, or the grounds of it, were never communicated to the plaintiffs or their agent, and it was contrary to the rules and practice of the board to do so. And the said witness also produced the original offer or question of insurance, proposed by J. H. Ladd and Co., the agent of the plaintiffs, upon the anwer and acceptance of which, dated 9th April, 1823, the said policy was effected, and the same is annexed (No. 1). And the said secretary proved that the said company had insured brick mills with brick gables at a greater rate of premium than this mill was insured at.

Testimony of J. Ledgwick.

Plaintiff then examined one John Ledgwick, who testified that the above mentioned agreement between Howard and Lawrence (No. 15) was, at the time the same was executed, left in his hands by the parties, to be kept. That he was well acquainted with the copartnery debts of Howard and Lawrence at the time the said agreement was entered into, having acted as their clerk up to that time; and that from that period to the time when he delivered up the said contract to Mr. John Scott, he knew, from his own knowledge, that the debts of Howard and Lawrence, during this period, had been greatly lessened by Lawrence, but to what amount he could not say. That being about to leave Fredericksburg, and having confidence in Mr. John Scott, he delivered the said agreement to him about 18 months ago; and that he had never been called upon by Howard and Lawrence, or by either of them, nor by said Poindexter, to deliver up the said agreement, any time after it was deposited with him as aforesaid.

Testimony of E. Banks.

The plaintiff then examined Edmund Banks, who testified that he had been acquainted with the mills insured by the policy in question for about five years before they were burnt; and that they were totally destroyed by fire about the 14th of February, 1834. That when he first knew the mills they were possessed by Joseph Howard and Joseph Lawrence; and that about 18 months before they were burnt Thomas Poindexter came into the possession of them, and they were then possessed by Lawrence and Poindexter, and they continued to possess them until they were burnt.

Testimony of J. Robinson.

The plaintiffs then examined John Robinson, who testified that he had known the mills in question for twenty years and upwards. That they were first possessed by Stephen and Richard Winchester, and that since he knew them they had been several times rebuilt. That he, the witness, is a house joiner and carpenter, and did the carpenter's work of the said mills the last time they were rebuilt. That they were rebuilt in the time that Howard and Lawrence occupied them, and he does not believe they could have cost less than $30,000.

Testimony of R. Ellis.

The plaintiffs then examined Robert Ellis, who testified that he was acquainted with the mills in question; that he should have valued them at $20,000.

Testimony of J. Ledwick.

The plaintiffs then examined John Ledwick, who testified that he lived as a clerk with Howard and Lawrence at the time the mills in question were last rebuilt; that the cost of rebuilding them amounted to $22,000; that the preceding mills at that place had been burnt while Howard and Lawrence possessed them, and they were not insured.

Whereupon the counsel for the defendants objected to the admissibility, competency, and sufficiency of the said evidence, and of all or any of the facts thereby proved, admitting the same to be true as above stated, to entitle the plaintiff to recover for the loss stated in the declaration, and proved by the evidence; and the grounds of the said objection were specifically stated as follows:

1st. That the interest claimed by the plaintiffs in the property insured, as disclosed by such evidence, was not, at the respective times of effecting the insurance and of the happening of the loss, an insurable interest and property.

2d. That it was not such an interest as is described in the originial offer of the plaintiffs' agent for insurance and in the policy, nor such as is averred in the declaration.

3d. That the said documents produced as preliminary proof of loss do not import a fulfilment, on the part of the plaintiffs, of the terms and conditions upon which the loss is declared to be payable by the ninth of the said printed proposals or rules annexed to the policy.

And the counsel for the defendants thereupon prayed the opinion and direction of the court to the jury, that the said evidence was not admissible, competent, and sufficient to be left to the jury as proof of the plaintiffs' title to recover for such loss in this action.

Which instruction the court refused to give, being of opinion: 1st. That the interest of the plaintiffs in the property insured, as disclosed by the said evidence, is a sufficient insurable interest to support the policy and the averment of interest in the plaintiffs' declaration in this action. 2dly. That it is such an interest as is described in the original offer for insurance, and in the policy and in the declaration. And 3dly. That although the said certificate of Murray Forbes is not such a certificate as is required by the said 9th rule annexed to the said policy, yet the evidence aforesaid is admissible, competent, and sufficient to be left to the jury, and from which they may infer that the defendants waived the objection to the said certificate, and to the other preliminary proof aforesaid. To which refusal and opinion of the court the defendants except, and this their bill of exceptions is signed, sealed, and ordered to be enrolled this 20th day of April, 1826.

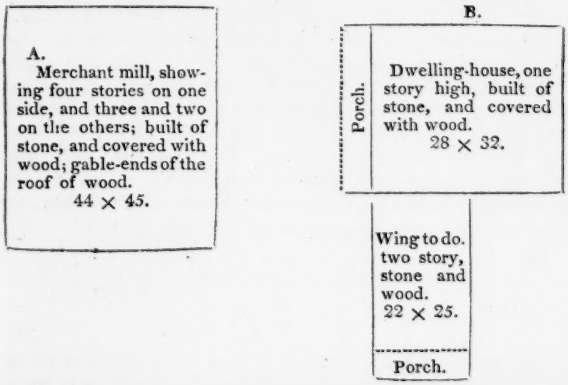
W. CRANCH. [L. S.]
B. THRUSTON. [L. S.]
J. S. MORSELL. [L. S.]

Second Bill of Exceptions.

After the evidence for the plaintiffs had been given as aforesaid, and the court had pronounced the opinion aforesaid, (all which is here referred to,)

the defendants proved that the said mill was a square building, about 44 feet by 45, built of stone to the square or eaves; that the roof was framed and covered entirely of wood; that the two gable-ends, run up perpendicularly from the stone wall to the top of the roof, were also constructed of wood, and the chimney ran up through the roof 15 feet from the gable-end; that if, instead of having gable-ends as aforesaid, the roof had sloped from all sides, in the form of what is commonly called a hipped roof, it would not have contained more of wooden or combustible materials than the roof of the said mill (constructed as it was) actually contained, exclusive of the gable-ends; that, according to the understanding and received use and meaning of terms among architects and house builders, a house described as a stone house covered with wood imports that all the walls to the eaves, and (if the plan have gable-ends) the gable ends to the top of the roof, are of stone; that the gable-ends running up perpendicularly to the top of the roof are a part of the walls, and not of the roof; that the covering is a term exclusively appropriated to the roof of such a building; and that, according to the same understanding, received use, and meaning of terms, a contract to build a stone house covered with wood would be understood as binding the builder to construct the gable ends to the top of the roof of the same materials as the walls, and to construct the walls, from the foundation to the top of the roof, of stone. And the defendants further proved, that the said mill had six floors, two of them in the roof—the wooden gable-ends showing two rows of windows above the square; and that in the uppermost floor of the roof a part of the machinery was fixed. And the defendants further proved, that the danger of catching fire, and the difficulty of extinguishing it after it should have commenced, were very considerably greater in a house constructed like the mill in question, with wood gable-ends, than if it had been constructed either with stone gable-ends, or with a hipped roof sloping from every side. And the defendants further proved, that the plaintiff and the said Joseph Howard had, on the 3d January, 1818, insured the said mill in the Mutual Assurance Society of Virginia, and had there, in their declaration upon which the insurance was effected, described the same as follows:

Description of premises as given to Mutual Assurance Society.


A.
Merchant mill, showing four stories on one side, and three and two on the others; built of stone, and covered with wood; gable-ends of the roof of wood.
44 × 45.
B.
Porch.
Dwelling-house, one story high, built of stone, and covered with wood.
28 × 32.
Wing to do. two story, stone and wood.
22 × 25.
Porch.

The policy effected upon said declaration in said Mutual Assurance Society described the said subject of insurance as follows:

This policy of assurance witnesseth, that Joseph Howard and Joseph W. Lawrence, residing at Fredericksburg, in the county of Spottsylvania, have entered for assurance against loss or damage by fire, in the Mutual Assurance Society against fire on buildings of the State of Virginia, as per their declaration No. 565, filed and recorded in the general office, the following buildings, occupied by themselves, situated on an island in the Rappahannock river, commonly known and called by the name of Winchester's Island, bounded by the Rappahannock river on all sides, in the county of Stafford, to wit:

Building used as	Marked	The walls built of	Covered with	Valued at	Net amount insured.	Premium.	Burnt, transferred, withdrawn, pulled down, or removed.
A merchant mill -	A.	Stone	Wood	$20,000	$15,000	$450	
Dwelling-house	B.	Stone	Wood	4,000	3,200	48	
					$18,200	$498	

The defendants then gave evidence to prove that Lawrence and Poindexter were insolvent; that the property which Lawrence had contracted to purchase of Howard, and Poindexter of Lawrence, as aforesaid, had depreciated very greatly in value since the said contracts; that the title was greatly encumbered, independent of the sums which Lawrence and Poindexter had severally and respectively undertaken to pay under their aforesaid contracts—was in litigation in cross suits in chancery between Winchester's executors and Howard and Lawrence, the proceedings in which are hereto annexed, in these words:

Record of the suit, Winchester's executors v. *Howard and Lawrence.*

In the court of the United States for the fifth circuit and Virginia district.

GEORGE WINCHESTER and WILLIAM WINCHESTER, executors of Wm. Winchester deceased, plaintiffs, *against* JOSEPH HOWARD and JOSEPH W. LAWRENCE, defendants. } *In chancery.*

Among the records and proceedings of the said court are the following, in the suit above mentioned:

Bill.

To the honorable the judges of the court of the United States for the fifth circuit and Virginia district:

Humbly complaining, show unto your honors, your orators George Winchester and William Winchester, citizens and inhabitants of the State of Maryland, executors of William Winchester, deceased, and in their own right as devisees of all the estate of William Winchester, deceased, formerly

a citizen and inhabitant of the said State of Maryland. That, several years ago, the firm of Winchester, Howard & Co., who then carried on extensive business at Fredericksburg, in the State of Virginia, was indebted to the father of your orators, the said William Winchester, deceased, viz. in nearly 30,000 dollars, for very heavy advances made to them. That Joshua Howard, a member of that firm, in whom the title was to a valuable farm and mill near Fredericksburg, agreed to convey and did convey this property to your orators' father in part payment of the said debt. Your orators' father having suffered greatly by his advances for the said firm of Winchester, Howard & Co., wished, as soon as possible, to dispose of the aforesaid mill and farm, in part to relieve himself thereby. That a certain Joseph Howard (son to said Joshua Howard) and a certain Joseph W. Lawrence, citizens and inhabitants of the State of Virginia, (and hereinafter to be named defendants,) offered to your orators' father to give 10,000 dollars for said mill and farm, payable at very long instalments. This sum, although greatly below the value of the property, your orators' father agreed to take, from his great anxiety to be in some degree relieved from his losses by the aforesaid firm of Winchester, Howard & Co. The deed originally executed by Joshua Howard to your orators' father for said property, bore date on the 20th of September, 1809. That the said William Winchester, deceased, also executed a deed for said property to said Joseph Howard and Joseph W. Lawrence *for said property*, in which last deed was inserted a mortgage clause, making the said property specifically liable to said William Winchester for the purchase money, for which the said Lawrence and said Howard had also executed their promissory notes. The said deed from Howard to your orators' father, and from the latter to said Howard and Lawrence, were delivered to the said Howard and Lawrence, to be admitted to record. Both these deeds the said Lawrence and Howard, at one time, wrote your orators were lost or destroyed, and had not been admitted to record. At a subsequent period, they alleged that the deed from Howard to William Winchester, deceased, had been found, and that they would have it admitted to record. The letters of Howard and Lawrence can be filed when made necessary. And your orators further show, that, owing to the difficulty growing out of the conduct of the said Lawrence and Howard as to the two aforesaid deeds, Joshua Howard, on the 27th of January, 1813, executed a deed of confirmation for said mill and farm, and appurtenances, to your orators, as devisees of said William Winchester, deceased, which deed, duly recorded, is hereto annexed and referred to, designated as exhibit A. Your orators also annex and refer to a deed executed by them to said Lawrence and Howard, duly recorded, and hereto annexed as exhibit B. This deed contains a clause subjecting the property to be sold to pay the balance of the purchase money due to your orators, agreeably to certain promissory notes given by said Howard and Lawrence, which at that time amounted to 6,695 dollars, and interest to grow due thereon; all which more fully appears from said deed. And your orators beg leave further to state, that there are still due to your orators, in part of the purchase money for said mill, farm, &c., from said Lawrence and Howard, three of said promissory notes, which have been protested at the Branch Bank of Virginia at Fredericksburg, together with interest due thereon and charges of protest. These notes the said Howard and Lawrence have very improperly refused to pay.

In tender consideration whereof, and forasmuch as your orators are properly relievable in a court of equity; to the end, therefore, that said Joseph Howard and Joseph W. Lawrence, citizens and inhabitants of the State of Virginia, aud now within the jurisdiction of this honorable court, may be made defendants to this bill, and answer the same on oath; that they be decreed to pay the amount of the purchase money due to your orators as aforesaid; that, in default of such payment at a short day, they be foreclosed of all equity of redemption of said mill, farm, and mortgaged premises (all which are in the State of Virginia, and within the jurisdiction of this honorable court); that a sale of the said property be decreed to satisfy your orators' demand; and that your orators may receive any such further and other relief as is agreeable to equity, and the nature of their case may require, &c. &c.

At rules held in the clerk's office of the said court in the month of June, 1817, the defendants, by counsel, appeared and filed their answer; which answer is in the words following, to wit:

Answer.

The answer of Joseph Howard and Joseph W. Lawrence to a bill of complaint exhibited against them in the court of the United States for the Fifth Circuit and Virginia District, by George Winchester and William Winchester, executors of William Winchester, dec'd.

These respondents, saving to themselves all benefit of exception to the complainants' bill, for answer thereto say: That the said William Winchester, now deceased, having, by his letter of the 21st day of September, 1809, (which is exhibited as a part of this answer, and marked A,) offered to sell the mill island in the Rappahannock river, called Winchester's Island, and specified his terms, these respondents acceded to his proposition and purchased the said property, and, on the 13th day of November following, performed their part of the agreement, by *by* delivering acceptances, assigning a note of Samuel Thomas, and executing certain notes, a part of which are the same as those referred to in the complainants' bill—all which will appear by reference to the receipt of the said William Winchester, herewith exhibited as a part of this answer, and marked B; in which the said William Winchester also agrees that for those several sums he was to convey to these respondents that property called Winchester's Island, with all the rights and improvements belonging to the same. The said island was held under a lease, renewable for ever, paying an annual rent of £ ; and, although the respondents are advised that the said receipt and agreement, according to its legal effect, bound the said Winchester to convey the said property with general warranty to them, yet they admit that, in reality, their contract was for the said lease, subject to the said rent; but they insist that they were entitled to a warranty of said lease, subject to the said rent, against all other claims whatever; and they have always considered that subject as of the utmost importance to them, as the sequel will show, since the said property had passed through the hands of Richard and Stephen Winchester, or one of them, who became insolvent; and they apprehended, and do apprehend some danger from the creditors of the said Richard and Stephen Winchester. In 1811, these respondents, having paid a considerable part of the purchase money, received a deed from the said Winchester for said property; but the said deed containing no clause of warranty, or, if

any, only a special warranty against the said Winchester, and those claiming under him, (the said deed being lost or destroyed, (and, if hereafter found, will be exhibited,) these respondents cannot speak more particularly of it,) they objected to the said deed, and refused to accept it as a fulfilment of the said contract on the part of the said Winchester, and so informed him by letter. Of this letter the respondents, not having retained a copy, cannot speak positively, but the substance is stated above, according to their best reollection. If in this they are wrong, the plaintiffs can correct them, for they probably have the letter. To this letter they received from said Winchester an answer, which is exhibited as a part of this answer, and is marked C, to which they beg leave to call the attention of the court. In pursuance of the suggestion of this letter, they procured Mr. Rootes to prepare a deed with a proper warranty, which they sent to Maryland, with a view to have it executed by said Winchester, who shortly after died without executing the deed, so far as they know or believe. A part of the notes given by these respondents, on account of the said purchase, having fallen into the hands of David Winchester, and he having notified them thereof, they objected to making any further payment until they should have such a title as the said contract authorized them to demand; in consequence of which he enclosed to them, in a letter herewith exhibited, marked E, the deed referred to in the complainants' bill. On the 28th of September, 1813, these respondents wrote to the said D. Winchester, or the complainants, in substance, according to their best recollection, (they not having retained a copy,) stating that it was defective and not according to the contract, and objecting or refusing to accept it as a compliance with the contract; and, on the 4th of October following, they enclosed to the said D. Winchester, or the complainants, a deed with proper warranty, according to the construction of the contract above stated, to be executed by the complainants. They have no copy of that deed; and, if these respondents err in their recollection of the purport of the deed so sent to be executed, the complainants can correct them, as these letters and deed came to their hands, as appears by the letter of the complainant, William Winchester, herewith exhibited, marked F. And these respondents pray that the complainants may be compelled to produce and file all the papers herein stated to exist which are in their power, and not in the power of these respondents, as well the said deeds so forwarded to be executed as the said letters, and others hereinafter mentioned. These respondents afterwards received from the complainants the letter herewith exhibited, marked G, in which they peremptorily refuse to execute any other deed, and insinuate that the original deed executed by William Winchester was a proper one, although it will appear that it was not, as well by the letter of William Winchester the elder, before referred to, as from the letter marked I, hereinafter referred to. These respondents, in this embarrassing situation, having paid a large portion of the purchase money, and the complainants residing out of the State, and not amenable to the process of any court here, determined to record the said deed, that they might have some sort of title, and to insist upon the execution by the complainants of another deed in conformity to the contract. *The* accordingly recorded the deed, and wrote to the complainant George a letter, a copy of which is exhibited, marked H, in which they propose to pay the purchase money if a proper deed was made; and they pray that the complainants may be required to produce the original of this letter. To this these respondents received an answer, herewith exhi-

bited, marked I, to which they beg leave to call the attention of the court. To this letter these respondents returned an answer, a copy of which is exhibited, marked J; and they pray that the complainants may be compelled to produce the original of that letter. These respondents now are, and always have been willing to pay the balance of the purchase money, upon their receiving such title as they are advised they are entitled to; and they submit to the court whether the complainants ought to demand the residue of the purchase money without giving such a title. Denying all fraud, they pray hence to be dismissed, &c.

These respondents further show that, when they purchased the said property, there was on the island an extensive merchant mill, in which Evans's machinery was erected and in use; and they then had no reason to believe that the patent right had not been paid for and obtained: and the mill wheels also ran on wing gudgeons; and they had no reason to suppose that the patent right for using the wing gudgeons was not obtained: but they afterwards ascertained that those patent rights had not been purchased, and they were placed in such a situation that they were obliged to forego the use of the said machinery or pay for the patent rights, which they accordingly did, viz. $525, on the 10th day of December, 1811, for the elevating machinery of Evans (see his receipt herewith exhibited;) $40 on the 25th of Jan'y, 1813, to Clarke & Evans, for the patent right of a flour press found in the mill when they purchased it; and on the 20th of May, 1815, $15 for the patent right to the wing gudgeons, to Withers, agent—all of which, they are advised, they are entitled to discount against the balance of the purchase money.

CITY OF RICHMOND, *to wit:*

This day Joseph W. Lawrence maketh oath before me, an alderman for the said city, that the foregoing answer, so far as it states facts as on his own knowledge, is true; and so far as it states facts as on the information of others, he believes it to be true. Given under my hand this 31st day of May, 1817.

GEO. BOOKER,
Alderman, city Richmond.

And at rules held in the clerk's office of the said court in the month of November, 1817, the plaintiffs, by counsel, replied generally to the answer of the defendants, and the cause was set down for hearing.

The following exhibits are filed in the cause:

Deed from J. Howard to W. & G. Winchester.

EXHIBIT A.

This indenture, made this twenty-seventh day of January, in the year of our Lord one thousand eight hundred and thirteen, between Joshua Howard, of Frederick county, in the State of Maryland, of the one part, and William Winchester and George Winchester, of the city of Baltimore, in the same State, of the other part. Whereas the said Joshua Howard, on the 20th day of September, in the year eighteen hundred and nine, by his indenture, did convey unto William Winchester, of the city of Baltimore, (the father of the above named William and George,) an island, with a mill thereon, in the river Rappahannock, about one mile above the town of Fredericksburg, in the State of Virginia, commonly known by the name of Winches

ter's Island, (formerly Mortimer's,) which island had been conveyed to the firm of Winchester, Howard & Company, by Charles Mortimer, by deed duly recorded, reserving a rent of eighty pounds per annum; and, by a subsequent conveyance from Richard Winchester and Stephen Winchester, (who, together with the said Howard, composed the aforesaid firm,) to the said Joshua Howard, the said island, with its appurtenances, became the sole property of the said Joshua Howard, as by reference to the several conveyances on record will more fully appear; and whereas the above mentioned conveyance from the said Joshua Howard to the said William Winchester hath not been duly recorded within the time limited by law; and whereas the said William Winchester hath departed this life, having first duly executed his last will and testament, and thereby devised to the above mentioned William and George all his real estate; and for the purpose of securing and confirming unto the said William and George the premises and estate so as aforesaid conveyed to the said William Winchester the elder in his lifetime, these presents are executed. Now this indenture witnesseth, that the said Joshua Howard, for and in consideration of the premises, and of the sum of five dollars to him in hand paid by the said William Winchester and George Winchester, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath, and by these presents doth grant, bargain, sell, assign, transfer, set over, and confirm unto the said William Winchester and George Winchester, all the aforesaid island called Winchester's Island, (formerly Mortimer's Island,) with the privileges, advantages, and appurtenances thereto belonging: To have and to hold the said island, with its appurtenances, unto the said William Winchester and George Winchester, their heirs, executors, administrators, and assigns, for ever, and to their only proper use, benefit, and behoof, for ever, and to and for no other use, intent, or purpose whatsoever—subject, nevertheless, to the payment of the said yearly rent of eighty pounds, reserved and made payable therefrom. And the said Joshua Howard, for himself, his heirs, executors, and administrators, doth hereby covenant, grant, promise and agree, to and with the said William Winchester and George Winchester, that he, the said Joshua Howard, shall and will for ever hereafter warrant and defend the aforementioned island, called Winchester's Island, and the appurtenances, unto the said William and George Winchester, and their heirs and assigns, against all manner of persons claiming by, from, through, or under him the said Joshua Howard, his heirs or assigns, and all claims whatsoever, except the aforesaid yearly rent.

In witness whereof, the said Joshua Howard hath hereto set his hand and seal the day and year first above written.

JOS'A. HOWARD. [L. S.]

Signed, sealed and delivered in presence of
EDW'D JOHNSON,
EDW'D PHILAN,
JOHN ELLIOTT,
JNO. HARGROVE,
MICH'L BONDELL.

STATE OF MARYLAND, *City of Baltimore, to wit:*

Be it remembered, that, on this twenty-seventh day of January, eighteen hundred and thirteen, personally appeared before me, Edward Johnson,

mayor of the city of Baltimore, the within named Joshua Howard, and acknowledged the foregoing to be his act and deed, according to the true intent and meaning thereof.

In testimony whereof, I have hereto signed my name, and affixed the seal of the corporation of the city of Baltimore, the day and year above written.

[SEAL.] EDW'D. JOHNSON,
Mayor of the City of Baltimore.

At a court held for Stafford county the 8th day of March, 1813, the foregoing indenture between Joshua Howard, of the one part, and William Winchester and George Winchester, of the other part, appearing to the satisfaction of the court, by the certificate of the mayor of the city of Baltimore, to have been legally acknowledged before him, is ordered, together with said certificate, to be recorded.

Teste: V. PEYTON, *C. S. C.*

Deed from W. & G. Winchester to Howard & Lawrence.

EXHIBIT B.

This indenture, made this twenty-third day of September, in the year of our Lord one thousand eight hundred and thirteen, between William Winchester and George Winchester, of the city of Baltimore, in the State of Maryland, of the one part, and Joseph Howard and Joseph W. Lawrence, of the town of Fredericksburg, in the State of Virginia, of the other part. Whereas Joshua Howard, of Frederick county, in the State of Maryland, by his indenture bearing date on the twentieth day of September, eighteen hundred and nine, did convey unto William Winchester, of the city of Baltimore, (the father of the above named William and George Winchester,) an island, with a mill thereon, in the river Rappahannock, about one mile above the town of Fredericksburg, in the State of Virginia, commonly known by the name of Winchester's Island, (formerly Mortimer's,) which island had been conveyed to the firm of Winchester, Howard and Company, by Charles Mortimer, by deed duly recorded, reserving a rent of eighty pounds per annum; and, by a subsequent conveyance, from Richard Winchester and Stephen Winchester, (who, together with the said Joshua Howard, composed the aforesaid firm,) to the said Joshua Howard, the said island, with its appurtenances, became the sole property of the said Joshua Howard, as by reference to the several conveyances on record will more fully and at large appear; and whereas the above mentioned conveyance from Joshua Howard to the said William Winchester the elder was not recorded within the time limited by law, and the said William Winchester the elder having departed this life, and by his last will and testament devised all his real estate to the said William and George Winchester, the said Joshua Howard, for the purpose of securing and confirming unto the said William and George Winchester the premises and estate so as aforesaid conveyed to the said William Winchester the elder in his lifetime, did, by his indenture bearing date on the twenty-seventh day of January, eighteen hundred and thirteen, assign, confirm, and make over the same unto the said Wm. and George Winchester, their heirs and assigns, as by reference to the said indenture, recorded among the land records of Stafford county, in

the State of Virginia, in liber AA, folio 367, will more fully and at large appear; and whereas the said William Winchester the elder, in his lifetime, did execute and deliver a conveyance for the above mentioned estate unto the said Joseph Howard and Joseph Lawrence, for the consideration of the sum of ten thousand dollars, the payment of which was secured by a mortgage clause inserted in said deed, which conveyance the said Joseph Howard and Joseph Lawrence also neglected or omitted to have recorded according to law; and the said William and George Winchester have, therefore, agreed to execute this deed of confirmation, for the purpose of securing and conveying unto the said Joseph Howard and Joseph Lawrence all the estate and premises so as aforesaid conveyed unto them by the said Wm. Winchester the elder in his lifetime: Now this indenture witnesseth, that the said William Winchester and George Winchester, for and in consideration of the premises, and of the sum of six thousand six hundred and ninety-five dollars, to them in hand paid, or secured to be paid, by the said Joseph Howard and Joseph Lawrence, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have, and by these presents do grant, bargain, sell, assign, transfer, and make over, unto the said Joseph Howard and Joseph Lawrence. all that the aforesaid island called Winchester's Island, formerly Mortimer's, with the buildings and improvements thereon, and the privileges, advantages, and appurtenances thereto belonging or in anywise appertaining, and also all the estate, right, title, claim, and interest of the said Wm. Winchester and George Winchester, or either of them, therein or thereto: To have and to hold the same, and every part and parcel thereof, unto the said Joseph Howard and Joseph Lawrence, their heirs, ex'ors, adm'ors, and assigns, as tenants in common, in as full, large, ample, and beneficial a manner as the said Wm. Winchester and George Winchester might or could have held and enjoyed the same, by any ways or means whatsoever; subject, nevertheless, to the payment of the said yearly rent of eighty pounds, reserved and made payable therefrom; and subject also to the payment of the sum of six thousand six hundred and ninety-five dollars, the balance of the purchase money now due and owing to the said William and George Winchester, agreeably to certain promissory notes executed by the said Joseph Howard and Joseph Lawrence; it being expressly understood and declared that the said sum of six thousand six hundred and ninety-five dollars, and all interest which may arise or grow due thereon, are charged upon and made payable out of said land, and is hereby declared to be a lien upon the said island and premises in the same manner as if a mortgage had been executed therefor by the said Joseph Howard and Joseph Lawrence to the said William and George Winchester. In witness whereof the said William Winchester and George Winchester have hereto set their hands and seals the day and year first above written.

W. WINCHESTER. [SEAL.]
GEO. WINCHESTER. [SEAL.]

Signed, sealed and delivered in the presence of
EDW'D JOHNSTON,
SAM'L YOUNG,
P. WELCH,
WM. MATTHEWS,
JNO. HARGROVE.

STATE OF MARYLAND, *City of Baltimore, to wit:*

Be it remembered, that, on this twenty-third day of Septem., eighteen hundred and thirteen, personally appeared before me, Edward Johnson, mayor of the city of Baltimore, the aforesaid William Winchester and George Winchester, and acknowledged the foregoing deed or instrument of writing to be their act and deed, according to the true intent and meaning thereof, and the act of Assembly in such case made and provided.

In testimony whereof, I have hereunto signed my name, and affixed the seal of the corporation of the city of Baltimore, the day and year above written.

[SEAL.] EDW'D JOHNSON,
Mayor of the city of Baltimore.

At a court held for Stafford county on the ninth day of May, 1814, the foregoing deed of bargain and sale between William Winchester and George Winchester, of the one part, and Joseph Howard and Joseph Lawrence, of the other part, appearing to the satisfaction of the court to have been legally acknowledged before the mayor of the city of Baltimore, is ordered, together with the certificate of said mayor, to be recorded.

Teste: V. PEYTON, *C. S. C.*

VIRGINIA, *Stafford county, to wit:*

I, John M. Conway, clerk of the court of the county of Stafford aforesaid, do hereby certify that the within deed of conveyance from William and George Winchester to Joseph Howard and Joseph Lawrence, is a true copy from the records of my office.

In testimony whereof, I have hereunto set my name, and affixed the seal of the said county, this 13th day of December, 1816, and in the 41st year of the commonwealth.

[L. S.] J. M. CONWAY, *C. S. C.*

STATE OF VIRGINIA, *Stafford county, to wit:*

I, Hancock Eustace, presiding justice of the court of Stafford county, in the State aforesaid, do hereby certify that the attestation hereto annexed, made by John M. Conway, clerk of the said court, is in due form, and by the proper officer appointed by the laws of the said State for that purpose; and that full faith and credit is due thereto in every court or office in the United States. Given under my hand, in the county of Stafford, in the State of Virginia aforesaid, this 13th day of December, in the year of our Lord 1816, and of the independence of the United States the forty-first.

HANCOCK EUSTACE.

Letter from H. and Lawrence to G. Winchester.

FREDERICKSBURG, *January* 7.

MR. GEORGE WINCHESTER.

SIR: I finde the deed is not yet destroyed. The date is September 20th, 1809. I will have it recorded. I wish the deed made seperate *of* the mortgage. We will execute the mortgage on sight. I wish the deed made from my father to you and brother, as executors of your father, and from

you to us. You will please resite the notes in the mortgage, and what they are for. We wish it done as soon as conve*nett*.

Yours, with respect,
H. LAWRENCE.

N. B. The names of ourselves are, Joseph Howard and Joseph Lawrence as joint tenants.

GEORGE WINCHESTER, Esq., *Baltimore.*

H. and Lawrence to W. Winchester.

FREDERICKSBURG, *February* 12, 1814.

Mr. WILLIAM WINCHESTER.

DR. SIR: Since your letter of the 7th of October we have written you twice. Be so good as to have the deed sent to you executed and sent back. We cannot account for this delay. We are an*tici*ous to have the deed. Will you be so good as to have it executed and enclosed to us on the recep'ion of this. Your compliance will greatly oblige your friends,

HOWARD & LAWRENCE.

H. and Lawrence to D. Winchester.

FREDERICKSBURG, *September* 28, 1813.

DAVID WINCHESTER, Esq.

DEAR SIR: We received yours of the 23d inst., enclosing to us a paper, purporting to be a deed for the mill and island; but, on examination, we find there is no warrantee whatever to the deed. Its not such a title as we contracted for, and have delayed writing until to-day that we might see the deed from Mr. Joseph Howard to Messrs. William and George Winchester, in which we find a general warrantee, and shall have a deed *writen*, which we will send on to have executed, after which we shall comply with the *tenner* of our notes.

Respectfully, yours,
HOWARD & LAWRENCE.

J. Howard to G. Winchester.

FREDERICKSBURG, *June* 24, 1813.

Mr. GEORGE WINCHESTER.

SIR: I have been *anct*iously waiting to get a deed from you. My father wrote me that he had *gave* you a deed some time ago. *Pleas* let us have a deed as soon as possible, as we *ware* to have had one on paying four thousand dollars, which has been done; and believing, as I do, that you have no disposition to delay making the deed, I confidently expect you will send it on in a few days. We just received unfavorable *knews* from Norfolk by this day's mail. The British have landed 1,500 marines on Crany Island, where they have cut off *there* retreat of our men. We are an*ct*iously waiting for the result of to-morr*us* mail.

Yours, with esteem, &c.,
J. HOWARD.

H. and Lawrence to G. Winchester.

FREDERICKSBURG, *January* 30, 1813.

Mr. WINCHESTER.

SIR: Not having an oppertunity of answering your favor before, I now say we have not the least objection to have the mortgage *clouse* in the deed,

if you think best, but only for the sum now due on the property. As to the deeds being admitted to record by the chancelor, I would not object, if the one from your father was not destroyed, and therefore it cannot be done. I now think it best for them to be made both *knew;* but, if you think best, as you are the best judge, you may have them done in any way that will make us safe and the title good, which was our agrement with your father. I cannot see any difficulty between us, as we are all disposed to do right. All we want is a good right for the property, *which* we pay for it. You will have it settled as soon as convenient. *Pleas* let us know when you think you can have it done.

H. & LAWRENCE.

GEORGE WINCHESTER, Esq., *Baltimore town.*

H. and Lawrence to G. Winchester.

FREDERICKSBURG, *November* 2, 1815.

GEORGE WINCHESTER, Esq.

SIR: In the course of this month one of our notes becomes payable. Not having heard from you for some time on the subject of the deed, and having shown your brother a letter from your father on that subject, presume he has informed you of the contents of said letter. We have no disposition to prolong the payment of the note, and if you will execute to us such a deed as we contracted for with your father, we will make the necessary errangements to pay our note when it becomes due. Please let us hear from you on this business as soon as convenient.

Respectfully, yours, &c.

HOWARD & LAWRENCE.

H. and Lawrence to G. Winchester.

FREDERICKSBURG, *September* 23, 1814.

Mr. GEORGE WINCHESTER.

DEAR SIR: We have, since receiving your letter informing us that you had passed some of our notes to Mrs. S. Winchester, *writen* her twice, informing that, in consequence of the great loss we had met with, it was impossible for us to take up the note which is due on the first day of October next, and solissiting some indulgence on the same, but have not heard from her yet on the subject. If you could see Mrs. Winchester, and state to her that we are extreamly anticious to hear from her on this subject, you *wod* confer a particular favor. Your writing *wood* answer the same effect.

Yours, &c.,

HOWARD & LAWRENCE.

A.

W. Winchester to H. and Lawrence.

BALTIMORE, *September* 21, 1809.

GENTLEMEN: I am ready to treat with you for the sale of the mill and island in the Rappahannock. The price is $10,000, with interest on the whole sum annually. The principal to be paid off at $1,000 yearly. The one half of the principal to be secured, with the interest thereon, by mortgage on real property in this State; or if we can agree on the price, I would take land in part pay at once. You will please inform me by letter of

your intentions on this subject, and where I may expect to see you, if you conclude to buy the mill.

Yours, &c.,
W. WINCHESTER.

Messrs. JOSEPH HOWARD and JOSEPH LAWRENCE.

B.

W. Winchester's Receipt for Purchase Money of Mill.

Received, Baltimore, 13th November, 1809, of Mr. Joseph Howard, Joshua Howard's two acceptances for $500 each; Samuel Thomas, his note for $800; also his own note for $229 33: and six notes, signed by the said Joseph Howard, which six notes are also to be signed by Joseph Lawrence, who is also to secure to me a further sum of two thousand dollars; for which several sums I am to convey to the said Howard and Lawrence that property called Winchester's Island, in the Rappahannock river, with all the rights and improvements belonging to the same.

W. WINCHESTER.

C.

W. Winchester to H. and Lawrence.

BALTIMORE, *September* 10, 1811.

GENTLEMEN: Mr. Lawrence's letter of the 4th came to hand yesterday. Supposing it would be a convenience to you, I had by the last mail sent Mr. Lawrence's note; as also a small note of Mr. Howard's, due the same time to the bank at Fredericksburg, for collection.

The deed I gave you for the island was copied verbatim from one prepared by Mr. Rootes for Samuel Howard. But be that as it may, I am ready to do any act that may be proper for the fulfilment of my contract with you. There is one thing, however, that may be proper for you to keep in view, to wit, that I derive title to the island through Joshua Howard; therefore, he will have to execute a proper deed to me. I will then give you a similar deed, with the single addition of a mortgage clause, agreeable to contract.

As Mr. Rootes is fully acquainted with all circumstances, it might be well for you to let him give the form of such a title as Mr. Howard should give to me, and we can then have no difficulty in making a proper title from me to you.

Mr. Joshua Howard will be here on the first of October, for the purpose of closing this business.

Yours, &c.,
W. WINCHESTER.

Messrs. HOWARD and LAWRENCE,
Island Mills, near Fredericksburg, Va.

E.

D. Winchester to H. and Lawrence.

BALTIMORE, *September* 23, 1813.

Messrs. HOWARD and LAWRENCE, *Fredericksburg.*

GENTLEMEN: Enclosed you will receive a deed, executed by my nephews, for the mill property. I will thank you to acknowledge the receipt of it by the return of the mail.

I am, respectfully,
Your most obedient servant,
D. WINCHESTER.

F.

W. Winchester to H. and Lawrence.

BALTIMORE, *October* 7, 1813.

Messrs. HOWARD and LAWRENCE.

Your two letters of the 28th Sept. and 4th inst. were both returned by D. Winchester, who is now very unwell. The deed received by the last shall be attended , as soon as George Winchester, who is now confined to his bed with a bilious fever, is able to attend to business.

I am yours, &c.,
W. WINCHESTER.

G.

W. and G. Winchester to H. and L.

BALTIMORE, *February* 17, 1814.

GENTLEMEN: We have received two letters from you on the subject of the property you occupy, and proposing to us the execution of a deed which you enclosed. In reply to such a request, we have only to say, that we have already executed to you a conveyance in strict conformity to the contract made by our father in his lifetime, and that we will not consent to execute any other. This is our final resolution, and we wish it to be so understood.

We have to request that you would again search among your papers for the original deed from our father to you, which, if you should be so fortunate as to find, would put the question at rest. We presume to make this request, as Mr. Joseph Howard was once before enabled, by a strict search, to discover the original deed from Joshua Howard to our father, which he supposed had been destroyed long before; and we flatter ourselves that the same success might possibly attend his efforts in this instance.

We are your obedient humble servants,
W. WINCHESTER.
GEO. WINCHESTER.

Messrs. HOWARD and LAWRENCE, *Fredericksburg.*

H.

H. and Lawrence to G. Winchester.

FREDERICKSBURG, *November* 2, 1815.

GEORGE WINCHESTER, Esq.

SIR: In the course of this month one of your notes become payable. Not having heard from you for some time on the subject of the deed, and having shown your brothers a letter from your father on that subject, presume he has informed you of the contents of said letter. We have no disposition to prolong the payment of the note; and if you will execute such a deed as we contracted for with your father, we will make the necessary arrangements to pay our note when it becomes due. Please let us hear from you on this business as soon as convenient.

Respectfully yours,
HOWARD and LAWRENCE.

Copy from letter-book.

I.

G. Winchester to H. and Lawrence.

BALTIMORE, *December* 7, 1815.

Messrs. HOWARD and LAWRENCE.

I received your letter of the 2d instant. I have long since stated to you that my brother and myself were determined to comply with every contract my father had made in his lifetime, and that we are now ready to comply with that which he made with you, and to execute a deed such as we heretofore offered, and none other.

The contract which my father made with you was reduced to writing by myself in the form of a deed, was executed, and delivered into your possession, which you (most strangely indeed) have thought proper to destroy.

I recollect distinctly the nature and tenor of that deed, and by my advise it was drawn in such a way as expressly to avoid any eventual responsibility about the title. It is, therefore, useless for us to have any further question about this part of the business.

I have only to add, that unless the note is paid at maturity, we shall immediately bring a suit to compel you to do so. The delays and pretexts to which you have resorted, I am sorry to say, convince me that you are disposed to prolong the payment as long as you can.

I am, with due respect,

GEO. WINCHESTER.

J.

H. & Lawrence to G. Winchester.

FREDERICKSBURG, *November* 17, 1815.

Mr. GEORGE WINCHESTER:

SIR: Your favor of the 7th inst. has been received; the contents noted; and, in consequence of your refusing to give us a good title to the island property, we have refused to pay the note until you do. If you will give us a good deed, with a general warrantee for the property, we will, on the execution of such a title, pay the note.

We have consulted one of the most able counsel in this place, who has examined all the papers relating to this business. He says you are bound to give us such a title as we want, which we hope you will do after mature reflection, as it will be extremely unpleasant to us to have a lawsuit about this business. But we cannot think of paying the notes until we get a deed with a general warrantee, as we have long since wrote you.

Yours respectfully,

HOWARD & LAWRENCE.

Copy from letter book.

H. & Lawrence's Account for Improvements on Mill.

Messrs. George and Wm. Winchester (executors of Wm. Winchester, deceased,) to Howard & Lawrence, Dr.

Dec. 10, 1811. To cash paid Oliver Evans, per John Love, his attorney at law and agent, for license to work his machinery	$525 00
To interest up to June 1, 1817, at 6 per cent - -	172 38
Jan. 25, 1813. To cash paid Clark and Evans for their patent flour press - - - - - - - -	40 00
To interest up to June 1, 1817, at 6 per cent. - -	8 16
May 20, 1815. To cash paid for Withers's patent wing gudgeons, per his attorney in fact, William C. Newton - -	15 00
To interest up to June 1, 1817 - - - -	1 80
	$762 34

LICENSE.

Know all men that I, Oliver Evans, of the city of Philadelphia, have received of Messrs. Howard and Lawrence, of the county of Stafford *county*, the sum of five hundred and twenty-five dollars in full, for license hereby granted to the said Howard and Lawrence, their heirs, ex'ors, adm'ors, or assigns, to construct, make, and use my patent machine and patented improvements in the art of manufacturing flour or meal, as follows, viz., for elevating grain and meal, and conveying the same from one part of the mill to another, and for cooling the meal, and attending the bolting-hoppers, for the use of their mill, consisting of three water wheels, driving not more than two pair of mill stones at the same time, situate on Rappahanock river, called Island Mills, for and during my present or any future patent term. In witness whereof, I have hereunto set my hand and seal, this 10th day of December, 1811.

OLIVER EVANS. [L. S.]

By JOHN LOVE, *his Attorney-at-law and Agent.*

Sealed and delivered in the presence of us:
JOHN LOVE.

Received of Howard & Lawrence the sum of forty dollars in full, for the privilege of using Clark & Evans's patent flour press in their mill in the river Rappahannock, called or known by the name of Island Mills, running three pair of stones, in Stafford county, State of Virginia, this 25th January, 1813.

JOHN CLARK,
OLIVER EVANS.

Teste:
JOHN LEDWIDGE,
JOHN MCCLURE.

Know all men by these presents, that I, Wm. C. Newton, attorney in fact for Michael Withers, patentee of cast-iron wing gudgeons, have, this 20th day of May, 1815, granted this license or permit to Howard & Lawrence, their heirs or assigns, to use in their mill Michael Withers's patent wing gudgeons; for which privilege I have received, for the only use of said Withers, fifteen dollars.

MICHAEL WITHERS,
By his Attorney in fact, Wm. C. Newton.

CORPORATION OF FREDERICKSBURG, *to wit:*

This day personally appeared before me, a magistrate of the said corporation, David Allmond & William Smith, and made oath that they had been well acquainted with the mill on the island, built by Winchester, Howard, & Co.; and further state, that the mill had the *alli*vators, hopperboys, conveyers, packing machine, and also wing gudgeons, when Howard & Lawrence purchased the property. The said deponents say they resided in the neighborhood of the mill, and were intimately acquainted with the property. Given under my hand this 22d November, 1817.

WM. GORDON.

The foregoing is a complete copy of the record in the aforesaid cause, as it now stands.

In testimony whereof, I hereto set my hand, and affix the seal of the said court, this 17th day of September, 1825.

[L. S.] RD. JEFFRIES, *Clerk.*

Record of suit H. & Lawrence v. *W. & G. Winchester.*

At a court of the United States for the fifth circuit and Virginia District, held in the city of Richmond, on the tenth day of December, in the year one thousand eight hundred and seventeen:

On the motion of Joseph Howard and Joseph W. Lawrence, by their counsel, who this day filed their bill, an injunction is awarded them to stop the execution of three judgments obtained against them in this court, on the third day of this month, by William Winchester and George Winchester, executors of William Winchester, deceased, upon their entering into bond, with sufficient security, in the penalty of eight thousand dollars, with condition to prosecute the injunction with effect, or, in case the injunction shall be dissolved, to pay and satisfy the said judgments, and such damages and costs as shall be awarded against them, and upon their releasing all errors at law in the said judgments and proceedings.

Which bill is in the words following, to wit:

Bill.

To the honourable the Court of the United States for the fifth circuit and Virginia District.

Humbly complaining, show to the court, your orators, Joseph Howard and Joseph W. Lawrence, citizens and inhabitants of the State of Virginia, that, on or about the 13th of November, 1809, they contracted with William Winchester for the purchase of an island in the Rappahannock river, with a valuable mill and other improvements thereupon, for the price of $10,000, payable in instalments, of which $4,000 have been duly paid; and at the present term of this court, judgments have been pronounced against your orators in the name of William Winchester and George Winchester, executors of the said William Winchester, who is dead, upon their several notes executed to the said William Winchester by your orators, on account of the said purchase money in part, the one of which judgments is for $1,428 75 debt, $48 90 damages and costs; one other is for the sum of $1,308 75 debt, $243 63 damages and costs; and the other for $1,368 75 debt, $172 37 damages and costs. That the said executors of the said William Winchester, deceased, have also filed a bill in equity in this court, against

your orators, seeking to subject the said property to be sold, for the payment of the balance of the purchase money aforesaid; to which bill your orators have filed their answer, and the cause is now depending. And your orators beg leave to refer to the proceedings and documents filed in the said cause, as a part of this bill, and pray that this may be taken as a cross bill to the same.

Your orators affirm, that, by the contract with the said William Winchester for the purchase of the said property, he was bound to insure and warrant to them a perfect and unencumbered title to the said property, with the exception of the annual rent reserved and payable on the said property by the original deed from Charles Mortimer to Stephen Winchester, a copy of which is now exhibited as a part of this bill; and your orators are advised that the evidences and documents referred to in their said answer fully prove that such was the contract. Your orators refer specially to their said answer, and the exhibits filed with it, for a detailed account of all the communications which have passed between the parties upon the subject of the said contract, and now pray that the said executors of the said William Winchester, deceased, may be compelled to produce the original letters and other papers transmitted by your orators to them, or either of them, or to their testator, mentioned in your orators' said answer; and if they shall fail to produce the said letters and papers, that they may state specially, and in detail, whether or not the said papers, or any of them, are in their possession or power. Your orators state further, that since the filing of the said answer, they have made a more careful examination than they had before done in relation to the title of the said island, the result of which has shown the importance of insisting, on their part, upon a full execution of the said original agreement, before they can properly be required to pay any farther sum on account of the purchase money aforesaid. They show that the said Stephen Winchester conveyed to Joshua Howard an undivided third part of the said property by deed, bearing date the 19th day of December, 1801, a copy of which is exhibited as a part of this bill: that thereafter, the said Richard Winchester and Stephen Winchester, trading under the firm of Richard and Stephen Winchester, conveyed the said property to John Scott, for the purpose of indemnifying Murray, Grinnan and Mundell, on account of their having endorsed the negotiable notes of the said Richard and Stephen Winchester, and for securing the payment to them of any money which might be due to them, as will appear by a copy of the said deed, dated the 28th day of March, 1806, herewith exhibited as a part of this bill. Your orators are informed that the said deed of trust was afterwards purchased by Joshua Howard, through the agency of Thomas R. Rootes; but at what time your orators are not informed, nor can they find, although they have made diligently inquiry, that any release of the said deed of trust, or any assignment thereof, has been anywhere admitted to record. But your orators are informed that the said deed of trust was obligatory on the said property, by virtue of the provisions of the said deed, for a large sum of money, to wit, about $13,500; and the said Thomas R. Rootes alleges, that the same has been assigned to him, either by the said Murray, Grinnan and Mundell, or Joshua Howard, to secure him a large sum of money due to him from Joshua Howard, stated by him to be near six thousand dollars. Your orators further show, that afterwards, on the 9th day of May, 1800, the said Richard and Stephen Winchester conveyed the said property to Joshua Howard, for the purpose of securing the pay-

ment to him of $40,000, a copy of which deed is exhibited as a part of this bill; and your orators can find no other conveyance from the said Richard and Stephen Winchester to the said Joshua Howard, and believe there was no other; nor has the said mortgage, so far as they know or believe, been ever foreclosed.

Your orators further show, that Richard S. Hackley, having obtained a judgment for a large sum of money against the said S. Winchester in this court, assigned the same to John McVicar; and an execution having issued upon the said judgment, a forthcoming bond was executed by the said Stephen Winchester, with Richard Winchester and John S. Wellford his securities; which forthcoming bond being forfeited, a judgment was rendered thereupon, and an execution issued upon the last mentioned judgment, on the 18th of June, 1806, which was levied by the marshal upon the said island, which was sold to the said John McVicar, as appears by the marshal's return on the said execution; the effect of which proceeding, as far as your orators are informed, was to put it in the power of the said John McVicar to redeem the liens on the said property. And your orators further show, that the said Richard S. Hackley and John McVicar afterwards sued out a subpœna in chancery in this court, against the said R. & S. Winchester. Joshua Howard and Thomas R. Rootes and Samuel Phillips also sued out a subpœna in chancery against the same defendants, both claiming, as your orators are informed and believe, some right to, or lien on the said island; but the said suits were dismissed at rules for the want of bills. Your orators further show, that they are informed and believe that the said deed of trust to John Scott bound the said property for upwards of $12,000, and that James M. Bell also had a lien on the said property for upwards of $1,500; but whether this was a separate lien, or was embraced in the said deed of trust to Scott, in consequence of the said Murray, Grinnan and Mundell being securities for the debt, they are not informed. Your orators further show, that since their purchase of the said property, they have expended in permanent improvements on the said property, nearly or about $20,000; and that they have pecuniary discounts against the said judgments, of which they could not avail themselves at law, on account of payments made for patent rights, as fully set forth in their said answer; and that the said Stephen Winchester is dead, and no person, so far as they are informed and believe, has administered on his estate.

To the end, therefore, that the said William Winchester and George Winchester, executors of William Winchester, deceased, who are citizens and inhabitants of the State of Maryland, Joshua Howard, also a citizen and resident of the State of Maryland, Thomas R. Rootes, Samuel Phillips, James M Bell, George Murray, Daniel Grinnan, and John Mundell, trading under the firm of Murray, Grinnan and Mundell; John Scott, Richard Winchester, a citizen and inhabitant of the State of Kentucky, and John McVicar, a citizen and inhabitant of New York, and Richard S. Hackley, residing in Spain, may be made defendants hereto, and may answer the premises fully and particularly; and especially that the said Murray, Grinnan and Mundell and James M. Bell may state what liens, and to what amount they at any time had or now have on the said property, and whether the same have been released or satisfied, and by whom satisfied; or, if assigned, to whom assigned; and that the said John McVicar may be required now to redeem, if it shall be found that he has a right to redeem, all the

said liens, allowing your orators for their permanent improvements; or that the defendants, the executors of William Winchester, may extinguish the claim of the said McVicar or Hackley, for your orators' benefit; and that the said Samuel Phillips may say whether he has any lien or claim, and what against the said property; and that the said Thomas R. Rootes may say what lien, and to what amount he has, if any, on the said property; and that the said ex'ors of William Winchester may also answer to the matters alleged in your orators' answer, as if the same were here repeated and interrogated; and may be decreed to convey the said property to your orators with general warranty; and until the matter hereof shall be heard, may be enjoined from further proceedings on their said judgments at law; and that your orators may have general relief, may it please the court, &c.

CITY OF RICHMOND, *to wit:*

This day Joseph Howard maketh oath before me, a magistrate for the said city, that the foregoing bill, so far as it states facts as on his own knowledge, is true; and so far as it states facts as on the information of others, he believes it to be true. Given under my hand, this 6th day of December, 1817.

WM. H. FITZWHYLSONN.

And at a court of the United States for the circuit and district aforesaid, on the first day of June, 1818, on the motion of the plaintiffs, by their counsel, leave is given them to amend their bill, which being done, on their motion an injunction is awarded them, to stay all proceedings on a judgment obtained against them in this court on the twenty-seventh day of the last month, by the defendants, executors of William Winchester, deceased, upon their entering into bond with sufficient security, in the clerk's office, in the penalty of three thousand one hundred dollars, with condition to prosecute the injunction with effect; or, in case it shall be dissolved, to pay and satisfy the said judgment, and all such damages and costs as shall be awarded against them, and upon their filing a release of all errors at law in the said judgment and proceedings, which amendment to the bill is in these words, to wit:

The complainants, by leave of the court, amend their foregoing bill by charging that, at the present term of this court, the defendants William and George Winchester, executors of William Winchester, dec'd, have obtained a judgment against your orators upon the last note executed by them for the purchase of the property in the bill mentioned, to wit, for $1,488 75, and $48 38, and costs. To the end, therefore, that the defendants to the foregoing bill may answer the matter of this amendment, and that the said ex'ors of William Winchester may be enjoined from proceeding on the said judgment, and that your orators may have general relief, may it please the court, &c.

And at a court of the United States, for the circuit and district aforesaid, the eighth day of December, 1819, on the motion of the plaintiffs by their counsel, leave is given them to amend their bill, which being done, on their further motion an injunction is awarded them, to stay all proceedings on a judgment obtained against them in this court by the def'ts, executors of William Winchester, deceased, on the first day of this month, upon their entering into bond, with sufficient security, in the clerk's office of this

court, in the penalty of three thousand four hundred dollars, with condition to prosecute their said injunction with effect; or, in case it shall be dissolved, to pay and satisfy the said judgment, and all such damages and costs as shall be awarded against them; which amendment of the bill is in these words, to wit:

November, 1819. The complainants, by leave of the court, further amend their foregoing bill, by charging that, at the present term of this court, the defendants, ex'ors of William Winchester, have obtained a judgment against your orators upon another note executed by them for the purchase of the property in the bill mentioned, to wit, for the sum of $1,548 75, and $3 57, and $96 72, and costs. They therefore pray that the defendants to the original bill may answer to the matter of this amendment; that the said ex'ors of William Winchester may be enjoined from proceeding on the said judgment; and that your orators may have all other necessary and proper relief, may it please the court to award, &c. &c.

And at a court of the United States for the circuit and district aforesaid, on the fifth day of June, 1820, on the motion of the plaintiffs, by their counsel, who this day amended their bill, an injunction is awarded them to stop the execution of a judgment obtained against them by the defendants, executors of William Winchester, deceased, in this court, on Saturday last, upon their entering into bond, with security, in the penalty of three thousand four hundred dollars, with the usual condition. The amendment last mentioned to the bill is as follows, to wit:

June, 1820. The complainants, by leave of the court, further amend their foregoing bill, by charging that, at the present term of this court, the defendants, executors of William Winchester, have obtained a judgment against your orators upon another note executed by them for the purchase of the property in the bill mentioned, to wit, for the sum of $1,608 75 for debt, and $56 28 damages and costs. They therefore pray that the defend'ts to the original bill may answer to the matter of this amendment, that the said executors of William Winchester may be enjoined from proceeding on the said judgment; and that your orators may have all other necessary and proper relief, may it please the court to award, &c.

And at rules held in the clerk's office of the said court in the month of September, 1820, on the motion of the plaintiffs, by their counsel, a new subpœna was awarded against the defendant Hackley; and the subpœna awarded in this cause heretofore having been executed on the defendants Rootes, Murray, Grinnan, Mundell, Bell, and Scott, and the bill filed more than three months, and those defendants still failing to appear and file their answers, on the further motion of the plaintiffs, their bill is taken for confessed as to them, and the court will proceed at a future day to decree the matter thereof, unless the said defendants do, on or before the first day of the term next after they shall have been served with a copy of this rule, show cause to the contrary. And the other defendants not having entered their appearance and given security according to a rule of the court, and it appearing that they are not inhabitants of this district, on the motion of the plaintiffs, it is ordered that they, the said def'ts, appear here on the first day of the next term, and answer the bills of the plaintiffs; and that a copy of this rule be forthwith inserted in some newspaper published in the city of Richmond for two months successively, and posted at the front door of the capitol in the said city.

On a copy of which rule against the defendants Rootes, Murray, Grinnan, Mundell, Bell and Scott, is an endorsement in these words, by the deputy marshall, to wit.:

Executed on Thomas R. Rootes, John Mundell, Daniel Grinnan, John Scott, and *Richard S. Hackley*, and James M. Bell. George Murray has departed this life.

A. R. THORNTON, *D. M.*,
For A. MOORE, *M. V. D.*

And at rules held in the clerk's office of the said court in the month of October, 1820, the defendants, executors of William Winchester, dec'd, appeared by counsel, and filed an answer in these words, to wit:

Answer of W. & G. Winchester.

The answer of George Winchester and William Winchester, citizens and inhabitants of the State of Maryland, executors and devisees of William Winchester, deceased, to the original bill and various supplemental bills of injunction, filed against themselves and others in the court of the United States for the fifth circuit and Virginia district, by Joseph Howard and Joseph W. Lawrence, complainants.

These defendants, reserving to themselves all benefit of exception to the errors and insufficiencies of said bills, for answer thereto say: That, many years ago, the firm of Winchester, Howard & Co., residing at Fredericksburg, Virginia, became indebted to these defendants' father, William Winchester, dec'd, in the sum of nearly thirty thousand dollars, for advances made for them; that Joshua Howard, a member of that firm, in whom the title was to a valuable island and mill, and other improvements in the Rappahannoc river, called Mortimer's Island, (afterwards Winchester's) agreed to convey, and did convey this property to your orators' father, in part payment of the said debt. Your orators' father having suffered greatly by his advances for the firm of Winchester, Howard & Co., wished, as soon as possible, to dispose of said property in part, to relieve himself thereby. That the complainants offered to your orators' father to give ten thousand dollars for said property, payable at very long instalments. This sum, altho' greatly below the value of the properiy, your orators' father agreed to take, from his great anxiety to be in some degree relieved from his losses by the aforesaid firm of Winchester, Howard & Co. The deed originally executed by Joshua Howard to your orators' father for said property bore date on the twentieth day of September, 1809. That said William Winchester, dec'd, also executed a deed for said property to Joseph Howard and Joseph W. Lawrence, in which last deed was inserted a mortgage clause, making said property specifically liable to the said William Winchester for the purchase money, for which the said complainants had also executed their promissory notes. The said deed from Howard to your orators' father, and from the latter to the complainants, were delivered to the said Howard & Lawrence, to be admitted to record. Both these deeds, the complainants wrote your orators, were lost and destroyed, and had not been admitted to record. At a subsequent period, they alleged that the deed from Howard to William Winchester, dec'd, had been found, and that they would get it admitted to record. And these defendants further show, that, owing to the difficulties growing out of the conduct of the complainants as to the two

deeds aforesaid, Joshua Howard, on the twenty-seventh day of January, 1813, executed a deed of confirmation for said property to these defendants, as devisees of William Winchester, dec'd; and these defendants executed a deed to said complainants. These deeds have been admitted to record on the application of the complainants; and these defendants are positive that it never was the intention of their father, *or* did he ever contract in his lifetime, to give any warranty of the title of the said property, *or* did he agree to convey any other or better title than that which he derived from Joshua Howard. And this defendant, George Winchester, remembers a conversation with his father on the subject of the title to the said property, and the great caution necessary to be observed in order to avoid any personal responsibility growing out of the sale to Howard and Lawrence. The said William Winchester observed, that he had suffered enough already; that he had sold to Howard & Lawrence the mill and property just as he had received it from Joshua Howard, without any contract or engagement on his part to warrant the title, about which Howard & Lawrence knew as much, or more than he did. This defendant thinks this conversation took place in the presence of the said Joshua Howard, who was then in Baltimore, and had called on defendant's father to procure the deed from him to the said Howard & Lawrence. And this defendant further answering, says that he, immediately after this conversation, and in the presence of his father and the said Joshua Howard, *he* prepared the deed to Howard & Lawrence herein before mentioned, and which he is positive contained no warranty of the title to the said property, as stated in the complainants' bill, or any other stipulation relating to the title of the said property.

And these defendants, further answering, say, that they verily believe the said deed, from their father to the said Howard and Lawrence, has either been destroyed by them for fraudulent purposes, or that the same now remains in their possession, and is concealed, because it is conclusive evidence of the real contract between their father and the said Howard and Lawrence, and entirely different from that set forth in the complainants' bill. And these defendants beg leave to refer to the letters of the said Howard and Lawrence, hereinafter mentioned and referred to, in which, as well as defendants recollect, (not having seen them for some time,) it will appear that they do not pretend that the deeds from Joshua Howard to defendants' father, and from the defendants to complainants, were destroyed by accident, but assert that they had destroyed them on purpose, pretending that they were defectively executed, and yet, shortly after, one of the deeds, to wit, from Joshua Howard to William Winchester, was found and produced. These defendants further allege, that the complainants had been in the peaceable possession and enjoyment of said property ever since they purchased it of these defendants' father; and they submit whether they are bound to make any other title to the complainants than they have made. These defendants refer to the suit in this honorable court, and the papers and documents filed therein, brought by these defendants against the complainants to foreclose the mortgage on said property. In that suit these defendants have filed all the letters or other papers of their deceased father which relate to this subject. [Letters marked 1, 2, 3, and 4, filed herewith as exhibits.]

That with respect to the pretended liens upon the property, which may interfere with the complainants, it would seem there is little or no ground for apprehension, from complainants' own showing. That these defendants

are informed, that neither John Scott, nor Murray, Grinnan and Mundell have answered complainants' bill; and these defendants presume that said deed of trust, spoken of in said bill for their benefit, has been fully paid off by Joshua Howard's funds; nor is there any proof filed that Thomas Read Rootes has any interest in said deed of trust. These defendants presume that the said Rootes acted as agent for said Howard, and paid Murray, Grinnan and Mundell out of his funds. Nor have these defendants any reason to believe that said Howard is in debt to Rootes, but the contrary, as they believe a great deal of his property came to the hands of said Rootes, as these defendants have understood. That with respect to the pretended claim of James M. Bell, these defendants presume that is either included in the deed of trust to Scott, as seems to be conjectured in said bill, and paid off, or to have been paid to said Bell, as that defendant has never filed his answer, though residing in the State and served with process. That with respect to the claim of Richard S. Hackley, or McVicker, or Phillips, as it consists of a right to redeem, according to the plaintiffs' showing, after paying an enormous sum of money, as Phillips has never filed a bill, and McVicker's suit is actually dismissed, as these defendants are informed, will appear from the records of this honorable court: the apprehensions of the complainants, if real, appear to be perfectly chimerical. With respect to the claim to a discount, claimed by complainants, for the price of Evans's and other patentees' improvements, these defendants cannot admit complainants' right; but shall submit the question to be decided by the court when the facts are made out by proper proofs.

GEO. WINCHESTER.
W. WINCHESTER.

These defendants pray that complainants' injunction may be dissolved, and that these defendants may be permitted to have the benefit of their judgments at law. These defendants, denying all fraud, combination, &c., pray to be hence dismissed, with their costs, &c.

CITY OF BALTIMORE, *to wit:*

This day, George Winchester and William Winchester, executors and devisees of William Winchester, deceased, made oath before the subscriber, mayor of the city aforesaid, that the allegations of the foregoing answer, so far as they relate to their own actings and doings, are true; and so far as they relate to the actings and doings of others, they believe them to be true.

Given under my hand and seal of the city of Baltimore, this 21st day of September, 1820.

[L. S.] EDWARD JOHNSON,
Mayor of the city of Baltimore.

To which answer the plaintiffs, at the same rule day, replied generally.

And at a court of the United States for the circuit and district aforesaid, held on the 23d day of December, 1820, this cause abates as to the defendant Murray, by his death; whereupon the same came on this day to be heard, on a motion of the defendant's executors of Winchester to dissolve the injunctions awarded to the plaintiffs; on consideration whereof, the court doth order one of its commissioners to examine, state, and settle, and to the court report, the amount which is due to the defendant Rootes from

the defendant Howard, and for which the said Rootes claims a lien on the mortgaged property in the proceedings mentioned; and the commissioner who may act is required to state any matter specially which he may deem pertinent, or which may be required by either of the parties to be so stated; and leave is given to the defendants to renew the motion for a dissolution of the injunctions on the coming in of the report.

And at rules held in the clerk's office of the said court, in the month of December, 1820, the defendants, Thomas R. Rootes, Daniel Grinnan, John Mundell, and John Scott, filed their answers, which answers are as follows, to wit:

Answer of T. R. Rootes.

The separate answer of Thomas R. Rootes to the bill of complaint exhibited against him and others in the court of the United States.

This defendant, now and at all times hereafter reserving to himself all benefit of exception, &c. to the said bill, for answer thereto, or to so much thereof as he can answer, he answereth and saith: That some time in the year 18 Richard and Stephen Winchester were merchants, carrying on trade at the town of Fredericksburg, under the firm of Richard and Stephen Winchester, and at the same time and place were concerned in trade with one John S. Wellford, and carrying on trade in the name of John S. Wellford and Co., and failed in both concerns. That the said Winchesters, being largely indebted to a certain Joshua Howard, of Maryland, (with whose daughter Stephen Winchester had intermarried,) conveyed all their property, and by deed of mortgage conveyed two thirds of the island and mill in the bill mentioned to the said Howard; the other third being at that time the property of the said Howard, as will appear by two deeds hereto annexed, No. 1 and 2, as part of this answer; and at the same time made over and delivered up to the said Joshua Howard all the books and debts of the firm of John S. Wellford; and the said Howard, after taking possession of the same, delivered them to this defendant, and at the same time executed a power of attorney, authorizing this defendant, as his attorney in fact, to collect the debts, &c., and dispose of the property, &c.; which said power is hereto annexed as part of this answer, No. 3; under which power this defendant proceeded to collect, sell, &c., and was involved in many suits and expenses in consequence thereof. This defendant states, that at the time these transactions took place, John S. Wellford, the partner of John S. Wellford and Co., was in Europe. Upon his return he brought suit against this defendant and Howard, and the Winchesters, in the superior court of Chancery, for the books and effects of his said concern, and was first appointed receiver for the said concern, and ultimately had the cause decided in his favor, after this defendant had bestowed great labor thereon, and expended large sums of money concerning the same during the many years it was depending; and ultimately there was a decree against this defendant for the costs, amounting to $, which he has paid, besides other costs for the said Howard, to whom he was security in court, as will appear by the certificate of the clerk hereto annexed, No. 4, as well as the fee-bills, ready to be produced when required; so that this defendant, instead of receiving commissions on the said debts, as had been agreed on between him and the said Howard, or in any ways benefited thereby, has lost considerable time and labor, and besides incurred great expense of money. This defendant states, that at the time the Winchesters

conveyed the property to Howard, it was incumbered with deeds of trust for large sums; the first to John Scott, bearing date the 26th of March, 1806, and hereto annexed as part of this answer, No. 5, to secure to Murray, Grinnan and Mundell any balance that might be due them upon a settlement, as also to indemnify them as endorsers upon a note to James M. Bell, for the sum of $1610; also a deed to John Minor, bearing date the 8th day of May, 1806, and hereto annexed as part of this answer, No. 6, to secure Doct. David C. Ker from all responsibility at the bank of Fredericksburg, as the endorser of the said Winchesters, which sums, when ascertained and paid at the bank, amounted to the sum of $8,846 20, as will appear by the receipt of the cashier of the bank, hereto annexed as part of this answer, No. 7. And though this receipt stands in the name of the said Ker, the money was paid by this defendant, as will appear by the deed of the said Ker to this defendant, bearing date the 9th day of May, 1807, and hereto annexed as part of this answer, No. 8, wherein he acknowledged the receipt of this money, and transferred his title to this defendant, as the attorney in fact for the said Howard. And this defendant also paid and settled the balance due Murray, Grinnan and Mundell, amounting to the sum of $1,906 37, independent of the note due Bell, as will appear by their deed to this defendant, bearing date the 26th day of January, 1807, and hereto annexed as part of this answer, No. 9; and this defendant has also paid the amount of Bell's note, as will appear by his own note given to the said Bell, and regularly paid in bank, and hereto annexed as part of this answer. This defendant states there had been a partnership trade carried on in Fredericksburg prior to both those before named, under the firm of Winchester, Howard, and Co., in which Joshua Howard was a partner; and upon Joshua Howard's coming to Virginia, he was sued for debts due from that firm; and being unable to give bail, unless this defendant would become such, it was agreed between this defendant and the said Howard that this defendant should be the bail, and any funds which might come to his hands as his attorney should be applied to pay these debts, as well as every other claim this defendant might have against the said Howard, arising out of his acts as attorney aforesaid; and it was well understood at that time, that the mill and island would be the only productive fund, and the deeds were, for that reason, taken to this defendant as before stated, and with the knowledge and consent of the said Howard. This defendant says there have been two judgments rendered against him as the bail of the said Howard, and both of which he has been forced to pay; one in the name of Wm. P. Flood, for $652 16, a copy of which judgment is hereto annexed as part of this answer, No. 10; the other in the name of Redman, for $446 42, a copy of which is hereto annexed, No. 11; also a judgment obtained by Wm. Wellford, a copy of which is hereto annexed, No. 12, amounting to £23 6*s.* 8*d.*, besides costs and interest: and this defendant has also paid other large sums of money, for which he has receipts. This defendant does not mean, when he says he paid all these large sums of money for Joshua Howard, that he paid them all from his own money; Joshua Howard paid some money; and Joshua Howard and Son, a firm in Baltimore, consisting of Joshua Howard and a son of his, paid some money to this defendant to enable him to meet these engagements, and also accepted some bills drawn by this defendant; and this defendant also sold some property of the Winchesters and collected a few small debts: but the said Howard was always in debt to this defendant for services and for

money advanced, as well for the concerns of the Winchesters, as for considerable sums paid and advanced to secure negroes and property for his daughter, Mrs. Winchester and her children; and also for money paid and advanced to enable Stephen Winchester to remove himself and family to the southern country; for which advances the said Howard always agreed this defendant should be secured as for the others. In this situation of affairs the mill and island mentioned in the bill were rented out for one or more years, when the said Howard determined to settle a younger son (the partner in Baltimore) on it, as I understood from both parties; and the said son came on and staid some little time, and returned, leaving the mill under my care and in my possession. Sometime in April, 1809, the said Joshua Howard and Samuel Howard wrote a joint letter to this defendant, to sell the mill, which letter is hereto annexed as part of this answer, No. 13, stating the price, and this defendant offered the same for sale. Some time that fall Joseph Howard, one of the complainants, delivered this defendant a letter from Joshua Howard, bearing date the 9th of September, 1809, and hereto annexed as part of this answer, No. 14, in the handwriting of the said Joshua, and to the care of the said Joseph, who delivered it to this defendant. In consequence of this letter the defendant showed the mill to the said complainant, showed him all the title papers, and told him then, and himself and the other complainant often since, that he had a claim upon the island, and would not release or give it up till he was paid, particularly as at that time it was known the said Joshua Howard was insolvent; and the complainant Joseph told this fact at that time to this defendant. This defendant says he actually then sold the mill to the complainant, and agreed that the first payment might be made to Joshua Howard; and this defendant gave the complainants possession of the mill and island. After giving them the information aforesaid, (or Joseph Howard,) and upon this defendant being informed that the money was for William Winchester, who had made some bargain for the mill, and who the complainants wished to be noticed in the deed, this defendant drew a deed for the said complainants, and delivered them to be executed, a true copy of which, as this defendant believes, is hereto annexed as part of this answer, No. 15; and the complainants were always informed no deed would be given until this defendant's balance was paid or secured; and the complainant Joseph has applied as late as 1813 for a deed, as will be seen by his letter that year, No. 16, hereto annexed as part of this answer. This defendant states that Samuel Howard, in 1809, attempted to obtain a deed for this property, as will be seen by his letter, dated January, 1809, and hereto annexed as part of this answer, No. 17; and failing in this, then wrote this defendant to sell. This defendant is satisfied that all these attempts were made to deprive him of his lien on the property, as Joshua Howard was insolvent, and to give a preference to Wm. Winchester, a favorite creditor; and this defendant is satisfied William Winchester must have known of his claim, he having so constantly and frequently refused to give a deed. This defendant says, in 1812 he became uneasy about his situation with Joshua Howard, and went from Richmond, where he then resided, to the upper part of the State of Maryland, where Mr. Howard resided. When he got there, Mr. Howard said he was not competent to settle an account, but if this would state his account he would send it to Baltimore, and his son Samuel should examine and settle it. This defendant then made him a rough statement, and, among other charges, charged a

commission for selling the mill, amounting to $500, which was not objected to; and the balance then due this defendant, as appears from a rough copy, was between two and three thousand dollars; but they have the paper, and it can be procured; and this defendant is willing to abide by that statement, except he can show a mistake therein. At the time this statement was made, Joshua Howard lamented his situation did not permit him to pay the balance, and this defendant told him he would not convey the mill till he was paid. Since that time this defendant has never heard of his account; and he should have brought suit himself against the complainants, had they not brought him into court, for they purchased with full notice.

This defendant is ready to settle his account with Joshua Howard, and, upon getting his balance, to convey to whomever the court may direct. He has still in his hands two bonds to collect, and has suits brought on them. Should they be productive, (which he fears they will not,) he will be ready to account for their amount.

Denying all combination, &c., he prays to be hence dismissed, &c.

THOS. R. ROOTES.

CITY OF RICHMOND, *to wit:*

This day Thomas R. Rootes appeared before me, a magistrate of said city, and made oath that the matters and facts stated in this answer, as to his own knowledge, are true; and what is stated from the information of others, he believes to be true. Given under my hand this 6th day of December, 1820.

WM. H. FITZWHYLSONN.

Answer of Grinnan and Mundell.

The separate answer of Daniel Grinnan and John Mundell, surviving partners of the late firm of Murray, Grinnan and Mundell, to the bill in Chancery, filed in a suit now depending in the United States court for the fifth circuit and Virginia district, wherein Joseph Howard and Joseph W. Lawrence are plaintiffs, and William Winchester and George Winchester, executors of William Winchester, deceased, and others, are defendants.

For answer to so much of the said bill as they are advised is material for them to answer, they answer and say, that the debt due to the late firm of Murray, Grinnan and Mundell, by Winchester, Howard and Co., was finally paid by drafts of Thomas R. Rootes on Joshua Howard and Son, of Baltimore. Your respondents pray to be hence dismissed, with costs.

COUNTY OF SPOTSYLVANIA, *to wit:*

This day John Mundell made oath before me, a magistrate for the county aforesaid, that the matters and things stated in the annexed answer are true, to the best of his knowledge and belief. Given under my hand this 2d day of December, 1820.

JOHN SCOTT.

Answer of J. Scott.

The separate answer of John Scott to the bill in Chancery, filed in a suit now depending in the United States court for the fifth circuit and Virginia district, wherein Joseph Howard and Joseph W. Lawrence are plaintiffs, and William Winchester and George Winchester, executors of Wm. Winchester, deceased, and others, are defendants.

For answer to as much of the said bill as he is advised is material for him to answer, he answereth and saith, that he, the respondent, only acted as trustee in a deed of trust on certain property mentioned in said bill, given to secure a debt due by Winchester, Howard & Co. to the defendants, Murray, Grinnan and Mundell; that the said property was not sold under the said deed; and he is informed that the said debt has been paid; but for this refers to the answer of the aforesaid defendants, Murray, Grinnan, and Mundell. The respondent therefore prays to be hence dismissed, with costs.

JOHN SCOTT.

CORPORATION OF FREDERICKSBURG:

This day came before me, a magistrate of the corporation aforesaid, John Scott, who made oath that the statement in the annexed answer is true to the best of his knowledge and belief.

Given under my hand this fourth day of December, 1820.

WILLIAM A. KNOX.

To which three last answers the plaintiffs, at the same rules, to wit, December rules, 1820, replied generally.

And at rules held in the clerk's office of the said court in the month of March, 1821, the subpœna awarded in this cause having been executed on the defendant, Richard S. Hackley, and the bill filed more than three months, and he still failing to file his answer, on the motion of the plaintiffs, by their counsel, their bill is taken for confessed as to that defendant; and the court will proceed at a future day to decree the matter thereof, unless the said defendant shall, on or before the first day of the term next after he shall have been served with a copy of this rule, show cause to the contrary.

On a copy of which rule is an affidavit, in the following words and figures, to wit.:

CITY OF RICHMOND, *to wit:*

This day George James personally appeared before me, a justice of the peace for said city, and made oath that he did, on the sixth day of this month, deliver a true copy of the within to Richard S. Hackley.

Given under my hand this eighteenth day of May, 1821.

WILLIAM TAZEWELL.

At rules held in the clerk's office of the said court, in the month of January, 1824, [the cause was set down for hearing, as to the defendants, Murray, Grinnan and Scott, the cause having been placed on the court docket, as to the defendants, the executors of Winchester and Thomas R. Rootes, by virtue of the order of December, 1820.]

The following is a copy of the exhibits filed in the cause:

Deed from Mortimer to S. Winchester.

This indenture, made this fifteenth day of July, in the year of our Lord one thousand seven hundred and ninety-nine, between Charles Mortimer, of the one part, and Stephen Winchester, of the other part, witnesseth, that, for and in consideration of the rents and agreements hereinafter

reserved, and which, on the part and behalf of the said Winchester and his executors and assigns are to be paid and performed, he, the said Charles Mortimer, has leased and to farm letten, and by these presents doth lease and to farm let, unto the said Winchester, his executors and assigns, all that tract or parcel of land lying in the river Rappahannock, about one mile above the town of Fredericksburg, formerly called Vicary's Island, but now known by the name of Mortimer's Island, with the appurtenances, unto the said Winchester, his executors and assigns, from henceforth for and during the natural life and lives of him, the said Stephen, aged about thirty-eight years, of Palemon Winchester, his son, aged about five years, and of Rebecca Eliza Winchester, his daughter, aged about seven years, and of the survivor or longer liver of them, renewable for ever by the said Winchester, his heirs, executors, or assigns, naming some other person or persons, upon the death of either of those before named, and so continuing to name upon the death of any party named, for ever. The said lease to commence from the first day of January, one thousand eight hundred; he, the said Winchester, his executors, heirs, or assigns, yielding and paying therefor, yearly and every year, upon the last day of December, the sum of eighty pounds specie, during the said term, unto the said Charles Mortimer, his heirs, executors, or assigns. And the said Winchester doth, for himself, his heirs, executors, and assigns, covenant and agree with the said Mortimer, his heirs and assigns, in manner following: He, the said Winchester shall and will well and truly pay, or cause to be paid, unto the said Mortimer, his heirs, executors, or assigns, the said yearly rent of eighty pounds specie as aforesaid, free and clear of all taxes, demands, or deductions of any kind whatsoever: *Provided always, nevertheless,* That if it shall happen that the said yearly rent hereby reserved, or any part of it, shall be behind and unpaid by the space of thirty days next over or after the day of payment, whereon the same ought to be paid as aforesaid, being lawfully demanded, then and in that case it shall and may be lawful to and for the said Mortimer, his heirs, executors, or assigns, into the said premises hereby leased, or any part thereof, in the name of the whole to re-enter, and the same to have again, retain, re-possess, and enjoy, as in his and their first or former estate or estates; any thing herein contained to the contrary notwithstanding. And the said Mortimer covenants, for himself, his heirs, executors, and assigns, that it shall be lawful for the said Winchester, his heirs, executors, and assigns, (paying the rent hereinbefore reserved) peaceably and quietly to have, hold, and enjoy all and singular the said leased premises, with the appurtenances, during the said term of three lives, renewable for ever, hereby demised, with full power and authority to raise stone, dig canals, build mills, and make any and whatever improvements thereon that the said Winchester, his heirs, executors, and assigns, may think properly, in the same way and manner as if the absolute fee simple estate was in the said Winchester: *Provided always,* That the said Winchester, his heirs, executors or assigns, commit no wilful waste thereon. And the said Mortimer hereby covenants with the said Winchester, that he, the said Mortimer, his heirs, executors, or assigns, shall, upon the request of the said Winchester, his heirs, executors, or assigns, and at their expense renew the said lease at the expiration of the said lives, or any of them, upon the said terms and conditions as are herein contained, and will renew the same for ever; and that the said Winchester, his executors or assigns, shall hold the same without any molestation or interruption

whatsoever, of or by him, the said Mortimer, his heirs, executors, or assigns, or of or by any other person or persons lawfully or equitably claiming or to claim by, from, or under him, them, or any of them.

In witness whereof the parties have hereunto affixed their hands and seals, the day and year first afore written.

CHARLES MORTIMER. [SEAL.]
S. WINCHESTER. [SEAL.]

At a district court held at Fredericksburg October the 4th, 1799, this indenture of lease was acknowledged by the said Charles Mortimer and Stephen Winchester, and ordered to be recorded.

Teste: JNO. CHEW, *C. F. D. C.*
A copy.—Teste: R. S. CHEW, *C. S. S. C.*

Deed from S. Winchester to J. Howard.

This indenture, made this nineteenth day of December, anno Domini eighteen hundred and one, between Stephen Winchester, of the town of Fredericksburg, and State of Virginia, of the one part, and Joshua Howard, of Frederick county, in the State of Maryland, of the other part, witnesseth, that the said Stephen Winchester, for and in consideration of the sum of five shillings, lawful money of this commonwealth, to him in hand paid at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, and sold, and by these presents doth grant, bargain, and sell unto the said Joshua Howard, one undivided third part of all that tract or parcel of land lying in the river Rappahannock, about one mile above the town of Fredericksburg aforesaid, formerly called Vacary's Island, lately known by the name of Mortimer's, now Winchester's Island, and purchased by the said Stephen Winchester of a certain Charles Mortimer, and conveyed to the said Stephen Winchester by deed bearing date the fifteenth day of July, seventeen hundred and ninety-nine, and of record in the clerk's office of the district court of Fredericksbug: To have and to hold the said undivided third part of the tract or parcel of land before mentioned unto the said Joshua Howard, his heirs and assigns for ever, in as full and ample a manner as the said tract or parcel of land is held by the said Stephen Winchester under the said conveyance from the said Charles Mortimer to him. In witness whereof, the said Stephen Winchester hath hereunto set his hand and affixed his seal, the day and year above written.

S. WINCHESTER. [SEAL.]

Signed, sealed, and delivered in presence of
SAMUEL HOWARD,
R. D. THROCKMORTON.

At a district court held at Fredericksburg the 4th day of May, 1802, this indenture for land was acknowledged by the said Stephen Winchester, and ordered to be recorded.

Teste: JOHN CHEW, *C. F. D. C.*
A copy.—Teste: R. S. CHEW, *C. S. S. C.*

Deed from R. & S. Winchester to J. Scott, in trust.

This indenture, made the twenty-eighth day of March, in the year of our Lord one thousand eight hundred and six, between Richard Winchester and Stephen Winchester, of the town of Fredericksburg, and State of Virginia, of the first part, John Scott, of the same place, of the second part, and Murray, Grinnan and Mundell, of the third part. Whereas Murray, Grinnan and Mundell have this day endorsed a note, negotiable at the Office of Discount and Deposite in Fredericksburg, for the sum of sixteen hundred and ten dollars, payable at one hundred and eighty days, for the said Richard and Stephen Winchester, and thereby made themselves liable for the same; and the said Richard and Stephen Winchester being anxious to secure, indemnify, and save harmless the said Murray, Grinnan and Mundell of and from any loss, damage, or injury, from the liability as endorsers, as aforesaid; and also to indemnify, save harmless, and reimburse the said Murray, Grinnan and Mundell from any other or further securityship or undertaking for them which hath heretofore been entered into, or which may hereafter be entered into and undertaken by them, the said Murray, Grinnan and Mundell, to and for the said Richard and Stephen Winchester, as also for any sum of money now due and owing, or which may hereafter grow due and owing, as well from contracts heretofore entered into as those which may hereafter be entered into, undertaken, or made; and for that purpose have agreed to convey to the said John Scott all their the said Richard and Stephen Winchester's estate, right, title, interest, claim, and demand, of, in, and to a certain tract or parcel of land situate, lying, and being in the county of Stafford, and being an island in the Rappahannock river, formerly called Vickar's, then Mortimer's, and now Winchester's Island, containing, by survey, eighty acres, be the same more or less, together with all the buildings, edifices, and improvements whatsoever thereon, with all and singular the appurtenances thereunto belonging or in anywise appertaining, upon the trust and confidence hereinafter expressed: Now this indenture witnesseth, that the said Richard and Stephen Winchester, for and in consideration of the premises, and of the sum of one dollar to them in hand paid by the said John Scott, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have, and each of them hath given, granted, bargained, and sold, and by these presents do, and each of them doth give, grant, bargain, and sell, unto the said John Scott, his heirs, executors, administrators, and assigns, all that tract or parcel of land aforesaid, so far as their estate, right, title, interest, claim, or demand in and to the same is or shall be, whether in law or equity, with all houses, buildings, orchards, ways, water, and water courses, profits, commodities, hereditaments, and appurtenances whatsoever to the same belonging or in anywise appertaining, and the rents, issues, and profits thereof; and of every part and parcel thereof, so far as they, the said Richard and Stephen, or either of them, may be entitled to the same or any part thereof: to have and to hold the said piece, parcel, or tract of land aforesaid, with all and singular its appurtenances, to him, the said John Scott, his heirs and assigns; in trust, nevertheless, and upon this special confidence, that in case the said Richard and Stephen Winchester, or either of them, their or either of their heirs, executors, and administrators, shall not well and truly pay or cause to be paid and satisfied the aforesaid sum of

whatsoever, of or by him, the said Mortimer, his heirs, executors, or assigns, or of or by any other person or persons lawfully or equitably claiming or to claim by, from, or under him, them, or any of them.

In witness whereof the parties have hereunto affixed their hands and seals, the day and year first afore written.

CHARLES MORTIMER. [SEAL.]
S. WINCHESTER. [SEAL.]

At a district court held at Fredericksburg October the 4th, 1799, this indenture of lease was acknowledged by the said Charles Mortimer and Stephen Winchester, and ordered to be recorded.

Teste: JNO. CHEW, *C. F. D. C.*
A copy.—Teste: R. S. CHEW, *C. S. S. C.*

Deed from S. Winchester to J. Howard.

This indenture, made this nineteenth day of December, anno Domini eighteen hundred and one, between Stephen Winchester, of the town of Fredericksburg, and State of Virginia, of the one part, and Joshua Howard, of Frederick county, in the State of Maryland, of the other part, witnesseth, that the said Stephen Winchester, for and in consideration of the sum of five shillings, lawful money of this commonwealth, to him in hand paid at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, and sold, and by these presents doth grant, bargain, and sell unto the said Joshua Howard, one undivided third part of all that tract or parcel of land lying in the river Rappahannock, about one mile above the town of Fredericksburg aforesaid, formerly called Vacary's Island, lately known by the name of Mortimer's, now Winchester's Island, and purchased by the said Stephen Winchester of a certain Charles Mortimer, and conveyed to the said Stephen Winchester by deed bearing date the fifteenth day of July, seventeen hundred and ninety-nine, and of record in the clerk's office of the district court of Fredericksbug: To have and to hold the said undivided third part of the tract or parcel of land before mentioned unto the said Joshua Howard, his heirs and assigns for ever, in as full and ample a manner as the said tract or parcel of land is held by the said Stephen Winchester under the said conveyance from the said Charles Mortimer to him. In witness whereof, the said Stephen Winchester hath hereunto set his hand and affixed his seal, the day and year above written.

S. WINCHESTER. [SEAL.]

Signed, sealed, and delivered in presence of
SAMUEL HOWARD,
R. D. THROCKMORTON.

At a district court held at Fredericksburg the 4th day of May, 1802, this indenture for land was acknowledged by the said Stephen Winchester, and ordered to be recorded.

Teste: JOHN CHEW, *C. F. D. C.*
A copy.—Teste: R. S. CHEW, *C. S. S. C.*

Deed from R. & S. Winchester to J. Scott, in trust.

This indenture, made the twenty-eighth day of March, in the year of our Lord one thousand eight hundred and six, between Richard Winchester and Stephen Winchester, of the town of Fredericksburg, and State of Virginia, of the first part, John Scott, of the same place, of the second part, and Murray, Grinnan and Mundell, of the third part. Whereas Murray, Grinnan and Mundell have this day endorsed a note, negotiable at the Office of Discount and Deposite in Fredericksburg, for the sum of sixteen hundred and ten dollars, payable at one hundred and eighty days, for the said Richard and Stephen Winchester, and thereby made themselves liable for the same; and the said Richard and Stephen Winchester being anxious to secure, indemnify, and save harmless the said Murray, Grinnan and Mundell of and from any loss, damage, or injury, from the liability as endorsers, as aforesaid; and also to indemnify, save harmlesss, and reimburse the said Murray, Grinnan and Mundell from any other or further securityship or undertaking for them which hath heretofore been entered into, or which may hereafter be entered into and undertaken by them, the said Murray, Grinnan and Mundell, to and for the said Richard and Stephen Winchester, as also for any sum of money now due and owing, or which may hereafter grow due and owing, as well from contracts heretofore entered into as those which may hereafter be entered into, undertaken, or made; and for that purpose have agreed to convey to the said John Scott all their the said Richard and Stephen Winchester's estate, right, title, interest, claim, and demand, of, in, and to a certain tract or parcel of land situate, lying, and being in the county of Stafford, and being an island in the Rappahannock river, formerly called Vickar's, then Mortimer's, and now Winchester's Island, containing, by survey, eighty acres, be the same more or less, together with all the buildings, edifices, and improvements whatsoever thereon, with all and singular the appurtenances thereunto belonging or in anywise appertaining, upon the trust and confidence hereinafter expressed: Now this indenture witnesseth, that the said Richard and Stephen Winchester, for and in consideration of the premises, and of the sum of one dollar to them in hand paid by the said John Scott, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have, and each of them hath given, granted, bargained, and sold, and by these presents do, and each of them doth give, grant, bargain, and sell, unto the said John Scott, his heirs, executors, administrators, and assigns, all that tract or parcel of land aforesaid, so far as their estate, right, title, interest, claim, or demand in and to the same is or shall be, whether in law or equity, with all houses, buildings, orchards, ways, water, and water courses, profits, commodities, hereditaments, and appurtenances whatsoever to the same belonging or in anywise appertaining, and the rents, issues, and profits thereof; and of every part and parcel thereof, so far as they, the said Richard and Stephen, or either of them, may be entitled to the same or any part thereof: to have and to hold the said piece, parcel, or tract of land aforesaid, with all and singular its appurtenances, to him, the said John Scott, his heirs and assigns; in trust, nevertheless, and upon this special confidence, that in case the said Richard and Stephen Winchester, or either of them, their or either of their heirs, executors, and administrators, shall not well and truly pay or cause to be paid and satisfied the aforesaid sum of

sixteen hundred and ten dollars, for which the said Murray, Grinnan and Mundell are endorsers, and liable as aforesaid; and also all and every other sum or sums for which the said Murray, Grinnan and Mundell now are or hereafter may be bound for or on account of the said Richard and Stephen Winchester, whether upon contracts now subsisting, or which may hereafter be made, entered into, and undertaken by the said Murray, Grinnan and Mundell, for them, the said Richard and Stephen Winchester, as also for all and every sum or sums of money now due and owing to the said Murray, Grinnan and Mundell, from the said Richard and Stephen Winchester, or which may hereafter be due and owing from them, the said Murray, Grinnan and Mundell, whether the same be by contracts now subsisting or hereafter to be made, entered into, or contracted; that then, or in default of all or any such suretyships, liabilities, engagements, and contracts, or debts being unpaid at the time and upon the terms stipulated and agreed upon by the said Richard and Stephen Winchester, or in default of any money due and owing, on whatsoever account it may be, from the said Richard and Stephen Winchester to the said Murray, Grinnan and Mundell, that then and in that case, or upon any of them happening, that the said John Scott, his heirs, executors, administrators, or assigns, upon the request of the said Murray, Grinnan and Mundell, or any or either of them, shall, after having advertised the time and place of such sale in one of the newspapers printed in the town of Fredericksburg for five days successively, sell all the said Richard and Stephen Winchester's estate, right, title, claim, and demand whatsoever, in law or equity, in and to the said eighty acres of land, and houses, buildings, and erections, at public auction, for ready money, and convey and assign over the same, and every part and parcel thereof, by proper transfers and conveyances to the purchaser, upon receipt of the purchase money; and out of the proceeds of such sale or sales, after defraying and discharging the expenses of this trust, pay and satisfy, save harmless, and indemnify the said Murray, Grinnan and Mundell for all sums which shall be then due and owing to them, or any other person or persons for which they may be bound *for* on account of the said Richard and Stephen Winchester; and also for any sum or sums which may thereafter grow due and owing; and the surplus, if any, to the said Richard and Stephen Winchester, or to such person as they shall, by any writing under their hand appoint, or to their legal representatives. And the said John Scott, for himself, his heirs, executors, and administrators, doth covenant, promise and agree, to and with the said Richard and Stephen Winchester, and Murray, Grinnan and Mundell, their heirs, executors, and administrators, that he, the said John Scott, executors and administrators or assigns, shall and will well and truly perform the trust hereby created, according to the true intent and meaning thereof; and in case they, the said Richard and Stephen Winchester, shall well and truly pay and satisfy, save harmless, and indemnify the said Murray, Grinnan and Mundell all sum and sums of money which shall or may be due and owing, and all sum or sums for which they may be bound for the said Richard and Stephen Winchester, and also all the costs attending this trust, that he, the said John Scott, his heirs, executors, and administrators, shall and will, on the request, and at the proper costs of the said Richard and Stephen Winchester, their heirs, executors, administrators, or assigns, reconvey the estate hereby conveyed. And the said Richard and Stephen Winchester, for themselves, their heirs, executors and administrators, do, and each of them doth covenant, promise and agree, to and with the said Murray, Grin-

nan and Mundell, that they, the said Richard and Stephen Winchester, their heirs, executors, and administrators, shall and will well and truly indemnify and save harmless the said Murray, Grinnan and Mundell from any and all of their engagements and undertakings as aforesaid; and will well and truly pay and satisfy, from time to time, all and every sum or sums of money which may be due and owing to them from the said Richard and Stephen Winchester. In witness whereof, the aforementioned parties have hereunto set their hands and affixed their seals the day and year first above written.

R. WINCHESTER. [SEAL.]
S. WINCHESTER. [SEAL.]
JOHN SCOTT. [SEAL.]
MURRAY, GRINNAN & MUNDELL. [SEAL.]

Signed, sealed, and delivered in presence of
R. D. THROCKMORTON,
RICHARD ROBEY,
WM. WELLFORD.

FREDERICKSBURG DISTRICT COURT, *Septem.* 30, 1806.

This indenture of trust from Richard Winchester and Stephen Winchester, of the first part, John Scott, of the second part, and Murray, Grinnan and Mundell, of the third part, was acknowledged by the parties, and ordered to be recorded.

Teste: RT. HENING, *C. F. D. C.*
A copy.—Teste: R. S. CHEW, *C. S. S. C.*

Deed of Mortgage from R. & S. Winchester to J. Howard.

This indenture, made this ninth day of May, in the year of our Lord one thousand eight hundred and six, between Richard Winchester and Stephen Winchester, of the one part, (citizens of Virginia,) and Joshua Howard, a citizen of the State of Maryland, of the other part, witnesseth, that whereas a partnership in trade has heretofore been carried on under the firm of Winchester, Howard & Co. consisting of the said Richard and Stephen Winchester and the said Joshua Howard; and whereas, in the course of the said trade, the said Joshua Howard has made advances for the said company beyond his proportion to a considerable amount, and has also become bound and security for the said company, and is liable for several sums of money far beyond his proportion, and to very considerable amount, that is to say, including the balance due him, and the securityships and liability as aforesaid, to the amount of forty thousand dollars; and the said R. & S. Winchester being desirous to secure and save harmless the said Joshua Howard and his heirs from the said securityships, and also to secure to and pay him the large balance actually due him, as by a schedule hereto annexed: Now this indenture witnesseth, that for and in consideration of one dollar to them in hand paid by the said Joshua Howard, at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged by the said R. & S. Winchester, have granted, bargained, and sold, and by these presents do grant, bargain, and sell, unto the said Joshua Howard, his heirs and assigns for ever, two thirds of the island called and known by the name of Mortimer's Island, together with two thirds of the mills thereon, with all the buildings, privileges, and advantages thereunto belonging or in anywise

appertaining thereto, the same being the whole of their interest in the said island, mills, and privileges; the other being the property of the said Joshua Howard, and the whole of which is held under a lease from Charles Mortimer; together with the following slaves: Jane and her child Beverley, Hess, Jarrett, Ned, Cuffy, Tony with his wife and child, Isaac, Jack, Nancy, and Violet, together with their future increase; together with thirteen horses and wagons, one cart, with all the necessary gears for both, and all the stock and plantation utensils on the said island being or in anywise appertaining thereto; also, one house and lot at present occupied by Stephen Winchester as a dwelling house; one house and lot occupied by John S. Wellford & Co. as a store, and R. & S. Winchester as a counting house; and one lot or square on the banks of Rappahannock river, on which stands a cooper shop; one lot on which stands a bake house and flour house; also, one thousand and thirty acres of land in the county of Spotsylvania, purchased by S. Winchester of William S. Stone; together with eight feather beds and furniture, all the plate, household and kitchen furniture of every kind, in the joint and separate possession of the said R. & S. Winchester at the date of these presents: To have and to hold the said several tracts of land, lots and houses, negro slaves, and personal property, to the said Joshua Howard, his heirs and assigns, for ever; but upon this special provision, that, provided the said Richard and Stephen Winchester shall, on or before the twenty-fifth day of December, which shall be in the year one thousand eight hundred and six, pay and satisfy to the said Joshua Howard the said sums of money for which he is security and liable, and also the balance due as aforesaid, with the interest thereon at the rate of six per centum per annum, and shall completely exonerate him from all liability and securityships for them or on their accounts, that then these presents shall be void and of no effect; otherwise to remain in full force and virtue in law.

R. WINCHESTER. [SEAL.]
S. WINCHESTER. [SEAL.]

Signed, sealed and delivered.

This sum due you as J. Howard & Son, with int. - -	$9,669 36
This sum due you - - - - - - - - -	5,000 00
This sum due you, being liable to W. Winchester for the same, with interest, - - - - - - - - -	21,106 16
This sum due P. Hoffman & Son, for which you are liable,	1,097 07
Sundry other notes and accounts due, as by Winchester, Howard & Co. - - - - - - - - - -	3,127 41
	$40,000 00

R. & S. WINCHESTER.

At a district court held at Fredericksburg on the 30th day of September, 1806, this indenture for lands, slaves, and personal property, from Richard Winchester and Stephen Winchester, of the one part, to Joshua Howard, of the other part, was acknowledged by the said Richard Winchester and Stephen Winchester, and ordered to be recorded.

Teste: RT. HENING, *C. F. D. C.*
A copy.—Teste: R. S. CHEW, *C. S. S. C.*

No. 1.

Letter from H. and Lawrence to G. Winchester.

FREDERICKSBURG, *Nov.* 17, 1815.

Mr. GEO. WINCHESTER.

SIR: Your favor of the 7th inst. has been received; the contents noticed; and in consequence of y'r refusing to give us a good title to the island property, we have refused to pay the note until you do. If you will give us a good deed, with a general warrantee for the property, we will, on the execution of such a title, pay the note.

We have consulted one of the most able counsel in this place, who *have* examined all the papers relating to this business. He says you are bound to give us such a title as we want, which we hope you will do after mature reflection, as it will be extremely unpleasant to us to have a lawsuit about this business; but we cannot think of paying the notes until we get a deed with a general warrantee, as we have long since written you.

Yours, respectfully,

H. & LAWRENCE.

GEORGE WINCHESTER, Esq.,
Baltimore, Maryland.

No. 2.

G. Winchester to J. Howard.

Mr. JOSEPH HOWARD:

I received yours of the 21st, and am glad to hear that the deed is not destroyed. If the deed from your father to mine is not destroyed, I shall wish that also to be preserved and recorded.

I should wish to be informed in what particular points those deeds were defective. I know that they were executed according to the established usage; and the information as to the mode of executing the deed was given to me by your father, who was acquainted with the laws of Virginia on that subject.

I have no objection to doing any thing which may be necessary to correct a *mistake*, but I have a very serious objection to changing the nature of the whole transaction, and giving to it the appearance of a new business between you and ourselves. There can be no legal objection to permitting the mortgage clause to remain in the deed; the laws of Virginia on that subject are, I presume, the same as our own, which allow of it; and my brother and myself are desirous that the contract should remain *exactly* as our father made it, not only in substance but in form.

Should there be no other defect in the deed than its not being recorded within the time limited by law, that, I suppose, could be easily remedied by an application to the chancery court for that purpose, stating the facts, who, with our consent, would immediately order it to be recorded, and gave it the same effect as if recorded within the time limited. This mode of proceeding would put the business on a proper footing.

Resp'ly,

GEO. WINCHESTER.

23*d Jan'y*, 1815.

[A copy.]

No. 3.

H. and Lawrence to Sarah Winchester.

FREDERICKSBURG, *September* 23, 1814.

MADAM: We wrote you, some time ago, that we had written to Mr. Winchester respecting some notes which he had of ours, one of which is due on the first day of October next, which note he wrote us he had passed off to you. We also wrote you that, in consequence of the loss we met with in accidentally getting our mill burnt, and with it a large quantity of wheat and flour, it would be impossible for us to take up the note when due, and solissiting you to indulge us. Not having heard from you, we have again written, fearing you did not receive our last letter.

Respectfully, yours, &c.

HOWARD & LAWRENCE.

Mrs. SARAH WINCHESTER,
Baltimore.

No. 4.

H. and Lawrence to G. Winchester.

FRED'G, *Octo.* 15, 1814.

Mr. GEO. WINCHESTER.

DEAR SIR: We received your favor of 10th inst., and we are extremely sorry to find your sister, Mrs. S. Winchester, can't with convenience indulge us in the payment of the note. We are sorry that we are not able to meet it when due; but it 's impossible for us take it up, and do hope you will not send it on for collection, as it will be attended with many serious consequences to us, and no good will result to Mrs. Winchester by sending it, as we have made every exertion to raise the money to meet the note, but have failed in getting it.

Respectfully, yours, &c.,

HOWARD & LAWRENCE.

No. 1.

Mortgage Deed from R. & S. Winchester to J. Howard.

This indenture, made this ninth day of May, in the year of our Lord one thousand eight hundred and six, between Richard Winchester and Stephen Winchester, of the one part, (citizens of Virginia,) and Joshua Howard, a citizen of the State of Maryland, of the other part, witnesseth, that whereas a partnership in trade has heretofore been carried on under the firm of Winchester, Howard & Co., consisting of the said Richard and Stephen Winchester and the said Joshua Howard; and whereas, in the course of the said trade, the said Joshua Howard has made advances for the said company beyond his proportion to a considerable amount, and has also become bound and security for the said company, and is liable for several sums of money far beyond his *his* proportion, and to very considerable amount, that is to say, including the balance due him and the securityships and liability as aforesaid, to the amount of forty thousand dollars; and the said R. & S. Winchester being desirous to secure and save harmless the said Joshua Howard and his heirs from the said securityship, and also to secure to and pay him the large balance actually due him, as by a schedule hereto annexed: Now this indenture witnesseth, that for and in consideration of one

dollar, to them in hand paid by the said Joshua Howard, at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged by the said R. & S. Winchester, have granted, bargained, and sold, and by these presents do grant, bargain, and sell, unto the said Joshua Howard, his heirs and assigns for ever, two thirds of the island called and known by the name of Mortimer's Island, together with two thirds of the mills thereon, with all the buildings, privileges, and advantages thereunto belonging, or in anywise appertaining thereto, the same being the whole of their interest in the said island, mills, and privileges, the other being the property of the said Joshua Howard, and the whole of which is held under a lease from Charles Mortimer; together with the following slaves: Jane and her child Beverley, Hess, Jarrett, Ned, Cuffy, Tony with his wife and child, Isaac, Jack, Nancy, and Violet, together with their future increase; together with thirteen horses, one wagon, one cart, with all the necessary gears for both, and all the stocks and plantation utensils on the said island being or in anywise appertaining thereto; also, one house and lot, at present occupied by Stephen Winchester as a dwelling house; one house and lot occupied by John S. Wellford & Co. as a store, and R. & S. Winchester as a counting house; and one lot or square on the bank of Rappahannock river, on which stands a cooper shop; one lot on which stands a bake house and flour house; also, one thousand and thirty acres of land in the county of Spotsylvania, purchased by S. Winchester of William S. Stone; together with eight feather beds and furniture, all the plate, household and kitchen furniture of every kind, in the joint and separate possession of the said R. & S. Winchester at the date of these presents: To have and to hold the said several tracts of land, lots and houses, negro slaves, and personal property, to the said Joshua Howard, his heirs and assigns, for ever; but upon this special provision, that, provided the said Richard and Stephen Winchester shall, on or before the twenty-fifth day of December, which shall be in the year one thousand eight hundred and six, pay and satisfy to the said Joshua Howard the said sum of money for which he is security and liable, and also the balance due as aforesaid, with the interest thereon at the rate of six per cent. per annum, and shall completely exonerate him from all liability and securityships for them on *on* their accounts, that then these presents shall be void and of no effect; otherwise to remain in full force and virtue in law.

R. WINCHESTER. [SEAL.]
S. WINCHESTER. [SEAL.]

Signed, sealed and delivered.

This sum due you as J. Howard & Son, with interest -	$9,669 36
This sum due you - - - - -	5,000 00
This sum due you, being liable to W. Winchester for the same, with interest - - - - -	21,106 16
This sum due P. Hoffman & Son, for *with* you are liable -	1,097 07
Sundry other notes and acc'ts due, as by Winchester, Howard & Co. - - - - - -	3,127 41
	$40,000 00

R. & S. WINCHESTER.

At a district court held at Fredericksburg on the 30th day of September, 1806, this indenture for lands, slaves, and personal property, from Richard Winchester and Stephen Winchester, of the one part, to Joshua Howard, of the other part, was acknowledged by the said Richard Winchester and Stephen Winchester, and ordered to be recorded.

Teste: RT. HENING, *C. F. D. C.*

No. 4.

VIRGINIA.

At a superior court of Chancery, holden at the capitol in the city of Richmond the 4th day of February, 1809:

JOSHUA HOWARD. plt.
against
RICHARD and STEPHEN WINCHESTER, JOHN S. WELLFORD & COMPANY, ROBERT PATTON and THOMAS GOODWIN, def'ts.

On motion of the plaintiff, by counsel, the rule made in this cause on Wednesday last, requiring security for costs, is set aside. Thomas R. Rootes, esq., of the town of Fredericksburg, now in court, agreeing to be security for payment of the said costs.

A copy.—Teste: WM. W. HENING.

No. 6.

Trust Deed from R. and S. Winchester to J. Minor.

This indenture, made this eighth day of May, anno Domini one thousand eight hundred and six, between Richard Winchester and Stephen Winchester, of the town of Fredericksburg of the first part, John Minor, of the county of Spotsylvania, of the second part, and David C. Ker, of the same county, of the other part. Whereas the said Ker hath become bound for the said Richard and Stephen Winchester, as an endorser, at the Office of Discount and Deposite at Fredericksburg, for a considerable sum, and the same responsibility is likely to be renewed from time to time, and to be increased; against the risks and consequences of which responsibilities, present and to come, the said Richard and Stephen are willing to secure the said Ker by a deed of trust: Now this indenture witnesseth, that the said Richard and Stephen, for and in consideration of the premises, and of five shillings, to them in hand paid, as well by the said Minor as the said Ker, at and before the sealing and delivery of these presents, the receipt whereof they do hereby acknowledge, have granted, bargained and sold, aliened and confirmed, and do by these presents grant, bargain, and sell, alien and confirm unto the said Minor, his heirs and assigns for ever, all their right, title, and interest in the island commonly called Mortimer's Island, and in the mill-house and improvements on the same; also, the houses and stores now occupied by the said Richard and S. Winchester, and by John S. Wellford & Comp'y, on Caroline street, and the house, lot, and improvements, in the occupation of the said Stephen Winchester, back of the store-house; also, the warehouse and lot on street, occupied by the said Richard and Stephen Winchester as their cooper's shop and quarry, with the land connected with the same, in the town of Fredericksburg; also, a tract of land purchased of William S. Stone, lying in Spotsylvania, as by

deed now of record in the office of the county court of Spotsylvania, as will appear, containing by estimation one thousand and thirty acres, together with all and singular the hereditaments and appurtenances belonging to the same: To have and to hold all singular the said property and estates unto the said Minor, his heirs and assigns for ever, to his own use and behoof; in trust, nevertheless, to and for the following uses and purposes: first, to sell as much of the same as may at any time be necessary to raise and pay to the said Office of Discount and Deposite, or to the said Ker in case he shall have previously suffered, so much money as may at any time, or from time to time become due from the said Richard and Stephen Winchester there, upon their note or any of their notes now endorsed or hereafter to be endorsed by the said Ker, and remain unpaid until the same notes shall be protested, and to make as many sales as may be necessary at different times to pay the said office or the said Ker, as the case may require; and, after deducting the charges and expenses of sale, to pay the proceeds accordingly, *retaining* any surplus to the said Richard and Stephen Winchester: provided, nevertheless, that such sale shall be at public auction in the town of Fredericksburg, after advertising the time and place there for three weeks, in the public papers of the said town: and, secondly, to reconvey the surplus of the said property to the said R. and S. Winchester, or the whole, in case there should be no occasion for sale, so soon as the liability of the said Ker for the said R. and S. Winchester may cease. And the said R. and S. Winchester bind themselves and their heirs to save the said Ker harmless and indemnified from any loss in consequence of his said present and future endorsements. And the said Minor covenants well and truly to execute the trust herein declared. In witness whereof, the said R. and S. Winchester, and the said Minor, have hereunto set their hands and affixed their seals the day and year first above written.

R. WINCHESTER. [SEAL.]
S. WINCHESTER. [SEAL.]
JOHN MINOR. [SEAL.]

Signed, sealed, and delivered in the presence of

WM. J. ROBERTS,
DAVID ALMOND,
R. D. THROCKMORTON, as to R. & S. W.,
DABNEY HERNDON,
JOHN B. BENSON,
WM. ALLEN, as to J. MINOR.

At a district court held at Fredericksburg 30th September, 1806, the foregoing indenture of trust was acknowledged by Richard Winchester, Stephen Winchester, and John Minor, and ordered to be recorded.

Teste: RT. HENING, *C. F. D. C.*
A copy.—Teste: RT. HENING, *C. F. D. C.*

No. 7.

Statement of the debt due the Bank of Virginia, at the Office of Discount and Deposite, Fredericksburg, by Richard and Stephen Winchester, on protested notes, of which David C. Ker is the endorser, with interest calculated thereon up to the 8th day of May, 1807.

When due.	Days.	Original am't.	Protest.	Interest.	Total.
Note due 2d Jan. 1807	126	312 50	3 03	6 57	322 10
do 9 " "	119	434 00	3 03	8 61	445 64
do 16 " "	112	1,800 00	3 03	33 60	1,836 63
do 23 " "	105	134 00	3 03	2 35	139 38
do 23 " "	105	500 00	3 03	8 75	511 78
do 30 " "	98	1,850 00	2 20	30 22	1,882 42
do 6 Feb. "	91	696 00	2 20	10 56	708 76
do 13 " "	84	700 00	2 20	9 80	712 00
do 20 " "	77	460 00	2 20	5 90	468 10
do 27 " "	70	1,279 69	2 20	14 93	1,296 82
do 27 " "	70	465 00	2 20	5 43	472 63
		$8,631 19	$28 35	$136 72	$8,796 26
		136 72			
		28 35			
		$8,796 26			
Cl'k fees -	-	22 44			
Lawyer's fees -	-	27 50			
		$8,846 20			

OFFICE OF DISCOUNT AND DEPOSITE,
FREDERICKSBURG, 12*th May*, 1807.

Received of David C. Ker, esq., eight thousand eight hundred and forty-six dollars, twenty cents, which is in full for the eleven notes of Messrs. R. and S. Winchester, endorsed by David C. Ker, esq , including interest, costs, &c. agreeable to the above statement.

WM. J. ROBERTS, *Cash'r.*

No. 8.

Deed from D. C. Ker to T. R. Rootes, att'y for J. Howard.

This indenture, made this 9th day of May, 1807, between David C. Ker, of the one part, and Thomas R. Rootes, attorney in fact for Joshua Howard, of Maryland, of the other part. Whereas Messrs. Richard and Stephen Winchester did, by deed bearing date the 8th day of May, 1806, convey to John Minor, esq., in trust, certain property described in the said deed,

which is of record in the district court office of Fredericksburg, for the purpose of securing the said Ker as their endorser at the Office of Discount and Deposite at Fredericksburg, reference being had to the said deed will more fully appear; and whereas suits have been instituted against the said Ker by the said bank, upon his endorsements for the said Winchesters, in the district court of Fredericksburg, and his liability for them at this time, including interest and costs, amounts to the sum of eight thousand eight hundred and forty-six dollars and twenty cents; and the said John Minor has, in pursuance of the power vested in him by the said referred to deed, advertised the property conveyed to him as aforesaid, *advertised the same* to be sold on the 14th and 20th days of this present month, at public auction, for ready money, to raise and pay the said sum of $8,846 20, to exonerate the said Ker; and whereas the said Richard and Stephen Winchester did, by deed bearing date the 9th day of May, 1807, convey to Joshua Howard, of Maryland, by deed of mortgage, now recorded in the district court office of Fredericksburg, all their estate, both real and personal, as be reference to the same will more fully appear, and, among other things, the property so conveyed in trust to the said Minor, and to secure the said Ker as afore set forth; and whereas the said Howard is desirous of obtaining the said lien upon the said property so conveyed to him, by paying the whole sum for which the said property is bound for the said Ker, and has appointed Thomas R. Rootes his attorney in fact, in the State of Virginia: Now this indenture witnesseth, that the said Ker, for and in consideration of the sum of $8,846 20, to him in hand paid by the said Rootes, as attorney aforesaid, doth hereby make over and release unto the said Rootes, as attorney for the said Howard, all right, title, interest, and claim whatsoever, either in law or equity, that he might or may have in the said property so conveyed as aforesaid, in trust for his security, by the said Winchesters to the said Minor; and he doth hereby authorize and empower the said Rootes, as attorney aforesaid, to have and demand of the said Minor a full release or deed of conveyance, such as the said Minor is entitled to make, under his said deed for the said property, and in every shape and interest to stand in the same situation that he the said Ker now stands in, with respect to his rights, claims, and demands, both in law or equity, upon the said property or its proceeds. And the said Ker covenants, for himself and his heirs, to and with the said Rootes, as attorney aforesaid, and his heirs, that he will at any time hereafter join in any act or deed that may become necessary, in law or equity, for the purpose of carrying this indenture into effect, according to its true intent and meaning, which is to place the said Rootes, as attorney aforesaid, in the situation of the said Ker, with respect to his rights and interest in the deed to the said Minor. In witness whereof, the said Ker hath hereunto set his hand and seal, the day and year first above written.

DAVID C. KER. [SEAL.]

Teste:
WM. J. ROBERTS,
T. R. ROOTES, Jr.
PETER R. JOHNSON.

No. 9.

Deed from Murray, Grinnan and Mundell to T. R. Rootes, attorney for J. Howard.

This indenture, made this twenty-sixth day of January, in the year of our Lord one thousand eight hundred and seven, between Murray, Grinnan

and Mundell, of the one part, and Thomas R. Rootes, attorney in fact for Joshua Howard, of Maryland, of the other part. Whereas Richard and Stephen Winchester did, by deed bearing date the twenty-eighth day of March, one thousand eight hundred and six, which said deed is of record in the office of the district court of Fredericksburg, (reference being thereunto had will more fully appear,) convey to John Scott, in trust, a certain island and mills, or their interest in the same, for the purpose of securing the said Murray, Grinnan and Mundell from certain endorsements and securityships then entered into by them for the said Richard and Stephen Winchester; and also to secure to them any balance then due, or which might thereafter become due from the said Winchesters to the said Murray, Grinnan and Mundell; and whereas, by a settlement of accounts made the day of the date of these presents, the balance of nineteen hundred and six dollars and thirty-seven cents is due on account from the said Winchesters to the said Murray, Grinnan and Mundell, independent and distinct from the said note endorsed by them, as set forth in the said deed, which note still remains due and unpaid by the said Winchesters; and whereas the said Rootes, as attorney aforesaid, is anxious to obtain the claim and title of the said Murray, Grinnan and Mundell, under the deed aforesaid: Now this indenture witnesseth, that the said Murray, Grinnan and Mundell, for and in consideration of the sum of three thousand four hundred and sixty dollars and thirty-seven cents, to them in hand paid by the said Rootes, at and before the ensealing and signing of these presents, the receipt whereof they hereby acknowledge, have granted, bargained, and sold, transferred and conveyed unto the said Rootes, all their right, title, claim, and demand on the said island, as conveyed to the said Scott, their trustee, for their use, be the same, either at law or in equity; and they do hereby authorize the said Rootes to do all and any act that may respect the same, either by sale or otherwise, as he may think proper, and in the same way they could have done under the deed aforesaid, and to receive all and any sum of money which may be received by the said Scott, as trustee aforesaid, and to grant any discharge or discharges for the same, in as full and complete a manner as they could do, either at law or in equity. In witness whereof, they have hereunto affixed their hands and seals the day and year first above written.

MURRAY, GRINNAN & MUNDELL. [SEAL.]

Signed, sealed, and delivered in presence of us:

JNO. METCALFE,
JOHN BROWN,
WILL. RICHARDS.

No. 10.

Execution vs. T. R. Rootes.

The Commonwealth of Virginia to the Sheriff of Spotsylvania county, greeting:

We command you, that of the goods and chattels of Thomas R. Rootes, late in your bailiwick, you cause to be made the sum of one thousand one hundred and thirty-two dollars and eighty-two cents, which William T. Flood, late in our superior court of Spotsylvania, hath recovered against him for debt on forthcoming bond; also the sum of four dollars and sixty-eight cents, which to the said William *P.* Flood, in the same court, were

adjudged for his costs in that behalf expended, whereof the said Thomas R. Rootes is convicted, as appears to us of record; and that you have the same at the clerk's office of our said superior court, on the first day of August next, to render to the said William *P.* Flood of the debt and costs aforesaid, and have then there this writ. Witness, Robert Hening, clerk of our said court. at the court house, the 28th day of May, 1811, in the 35th year of our foundation.

ROBT. HENING.

Memo. This execution is to be discharged by the payment of $566 41 cents, with interest thereon, at the rate of six per centum per annum, from the 8th day of December, 1810, till paid, and the costs.

N. B. 62 cents of the above judgment was released in court by plaintiff.

No security to be taken.

Teste: RT. HENING, *Cl.*

I hereby certify, that Thomas R. Rootes became bound for the within debt, as special bail for Joshua Howard.

RT. HENING, *C. S. S. C.*

The amount of this ex'on, including costs, sheriff's, and int., to the 8th Septem., 1812, is $652 16.

No. 11.

Execution vs. *Rootes and Rootes, Jr.*

The Commonwealth of Virginia to the Sheriff of Spotsylvania county, greeting:

We command you, that of the goods and chattels of Thomas R. Rootes and Thomas R. Rootes, junr., late in your bailiwick, you cause to be made the sum of seven hundred and eighty-seven dollars and eighty-six cents, which William Redman, late in our county court of Spotsylvania, hath recovered against them for debt on forthcoming bond; also the sum of five dollars and ten cents, which to the said William Redman, in the same court, were adjudged for his costs in that behalf expended, whereof the said Thomas R. Rootes and Thomas R. Rootes, junr., are convicted, as appears to us of record; and that you have the same before the justices of our county court of Spotsylvania, at the court house, on the first Monday in October next, to render to the said William Redman of the debt and costs aforesaid, and have then there this writ. Witness, Robt. S. Chew, clerk of our said court, at the court house, the 10th day of August, 1811, in the 36th year of our foundation.

ROBERT. S. CHEW.

Memo. This execution is to be discharged by the payment of three hundred and ninety-three and ninety-three cents, with interest thereon, at the rate of six per cent. per an., fromt he 21st day of May, 1811, till paid, and costs.

No security to be taken.

Teste: ROBERT S. CHEW, *C. S. C. C.*

$446 72, pd. 13th Aug. 1812.

I hereby certify that this ex'on was issued agst. Thos. R. Rootes, who became bound as special bail for Joshua Howard.

R. S. CHEW, *C. S. C.*

No. 12.

Judgment—Wellford v. *Rootes.*

SPOTSYLVANIA COURT, APRIL TERM, 1810.

WILLIAM WELLFORD
vs.
THOS. R. ROOTES, att'y in fact for Joshua Howard.

Jud. for £23 6*s.* 8*d.*, with interest thereon, at 6 per cent per an., from the 6th day of April, 1807, till paid, and costs. Costs $9 12.

A copy.—Teste: R. S. CHEW, *C. S. C.*

Received the within of Mr. Thomas R. Rootes.

WM. WELLFORD.

Oct. 5, 1810.

No. 13.

Letter from J. Howard to T. R. Rootes.

FREDERICK COUNTY, *April* 21, 1809.

DEAR SIR: My son has declined moving to Fredericksburg, and I am getting old and infirm, that it will not be in my power to build a bridge and repair the mill; therefore, beg you will sell the mill and island for any sum you can get over $10,000 dollars; to be paid one fifth in hand, on getting possession, and the balance in three equal annual payments, with interest. The business you have to do for me, I hope, will be closed in a short time, for I wish to know the worst of it.

I am, dear sir, your obt. servt.,

JOSHUA HOWARD.

S. Howard to T. R. Rootes.

DEAR SIR: For some time past my father's spirits have been much affected by his situation; so much at this time, that he has put all his business under my direction, which renders my stay here necessary. You must exercise your own judgment as to the time of selling the mill; but, perhaps, a sale had better take place as soon as notice can be given. The terms as within, $\frac{1}{5}$ in hand, and the balance in three equal annual payments, with interest. Sell the stock that's on the island also.

If drafts on Balt. can be had in payment, it will suit better than the purchaser's bonds. You will please correspond with Mr. W. Winchester on the subject of the sale, and in future direct all letters for my father or self to his care.

The papers I wrote will be wanted on the 10th of May.

Y'r f'd,

SAML. HOWARD.

Apl. 24, 1809.

Addressed to THOMAS R. ROOTES, Esq., *Fredericksburg.*

No. 14.

J. Howard to T. R. Rootes.

FRED'K COUNTY, SAME CREEK, *Sept.* 9, 1809.

DEAR SIR: This will handed to you by my son Joseph, who, with a Mr. Lawrence, wishes to look at the mill; *an* I would thank you to make known the title, &c., as they wish to purchase, or rather to give property here for the property there. I am *a* trying to *settell* here with the creditors of W. H. and Co., but *canot* for want of knowing what funds there is or will be in your hands. What is done in the business J. S. Wellford and Co.? The creditors of that house have brought *sutes* against me here. If I could know how the business of W. H. and Co. stood, I believe I could get the creditors here to take an assignment of that paper. What is done in the case Banks? You will much oblidge me to let me *here* from you; and, if you have time, give me a statement of my business in your hands.

I am, d'r sir, yours with respect,

JOS'A. HOWARD.

THOMAS R. ROOTES, Esq., *Fredericksburg.*

No. 15.

Deed from Rootes, Howard & Winchester to H. & Lawrence.

This indenture, made this day of May, in the year of our Lord one thousand eight hundred and twelve, between Thomas R. Rootes, of the State of Virginia, and Joshua Howard and William Winchester, of the State of Maryland, of the one part, and Messrs. Howard and Lawrence, of the State of Virginia, of the other part. Whereas Richard and Stephen Winchester, carrying on trade in the State of Virginia, did, some time in the year 1806, convey to John Minor, as trustee, to secure David C. Ker from certain endorsements or securities to the Office of Discount and Deposite at Fredericksburg, amounting to the sum of $8,846 20, all their right, title, interest, and claim in an island in Rappahannock river, known by the name of Mortimer's Island, together with the mills and improvements thereon, which deed has been duly recorded accorded to law: and whereas the said Richard and Stephen Winchester did also, on the 28th day of March, 1806, convey all their right, title, interest, and claim in the same island, with its appurtenances, unto John Scott, also in trust, to secure certain sums then due, or which might thereafter become due upon a settlement of accounts between the said Richard and Stephen Winchester, and Messrs. Murray, Grinnan and Mundell, which balance, when ascertained, amounted to the sum of $1,906 37, as well also to secure and indemnify the said Murray, Grinnan and Mundell from a certain endorsement or security entered into by them for the said Richard and Stephen Winchester, as set forth in the said deed, also of record, and which amounted to the sum of $1,610; and whereas the said Richard and Stephen Winchester, afterwards, in consequence of being unable to carry on their trade, failed or stopped payment, and did on the 9th day of May, 1806, convey to the said Joshua Howard, by deed of mortgage, all their right and title to the said island and appurtenances, together with other articles therein specially set forth, which deed is also of record; and whereas, at the time of executing the said last mentioned deed of mortgage to the said Joshua Howard, the sum of $8,846 20

was then due from the said Richard and Stephen Winchester to the Office of Discount and Deposite at Fredericksburg, and secured by the trust to Minor, to exonerate and indemnify the aforenamed David C. Ker; and the sum of $1,906 37, as a balance due from the said Richard and Stephen Winchester to Murray, Grinnan and Mundell, upon a settlement of their accounts; and the further sum of $1,610, due the said Murray, Grinnan and Mundell, as endorsers of the said Richard and Stephen Winchester, both of which last mentioned sums were secured by the trust deed to the beforenamed John Scott; and whereas the said Thomas R. Rootes did, on the day of , for and on account of the said Joshua Howard, pay the said sum of $8,846 40 to the Office of Discount and Deposite at Fredericksburg, so as to exonerate David C. Ker from his endorsements for the said Richard and Stephen Winchester, and did also pay to the said Murray, Grinnan and Mundell the said sum of $1,906 37, in full of a balance due them on settlement; and did also pay the further sum of $1,610, in full discharge of the note on which the said Murray, Grinnan and Mundell had become the endorsers for the said Richard and Stephen Winchester; the said David C. Ker did, on the 9th day of May, 1807, transfer and make over to the said Thomas R. Rootes all his right, title, interest, claim, and demand in and to the said island, with its appurtenances, under the said trust deed, to the said John Minor, as will more fully appear by reference being had to the said deed; and the said Murray, Grinnan and Co. did also, on the 26th day of January, 1807, convey to the said Rootes all their right, title, interest, claim, and demand in the said island and its appurtenances, under the trust deed to John Scott, as will more fully appear, reference being had to the said deed; and whereas Joshua Howard did, on the day of , sell and transfer all his right, title, interest, claim, and demand in the said island and its appurtenances to the said William Winchester, for a valuable consideration; and whereas the said William Winchester did, on the day of , sell and transfer all his right, title, interest, claim, and demand in the said island and its appurtenances unto the said Messrs. Howard and Lawrence, for the sum of ; and the legal and equitable title in the said island and its appurtenances, under the deeds aforesaid, from the said Ker and Murray and Co., being in the said Thomas R. Rootes, no conveyances have heretofore been made to transfer and convey the said property to the said Howard and Lawrence, under the said contracts and agreements heretofore referred to. Now this indenture witnesseth, that for and in consideration of the premises, and of the sum of one dollar in hand paid by the said Howard and Lawrence to the said Rootes, Howard, and Winchester, the receipt whereof they do hereby severally acknowledge, and thereof and every part thereof they do hereby acquit and discharge the said Howard and Lawrence, they have granted, bargained, and sold, and by these presents do grant, bargain, and sell unto the said Howard and Lawrence, their heirs and assigns, for ever, the said island called Mortimer's Island, with the appurtenances thereunto appertaining or in anywise belonging: To have and to hold the same, with all the privileges and advantages thereunto belonging, in the same manner and as of the same estate the said Richard and Stephen Winchester enjoyed therein, free and clear from the claim and demands of the said Thomas R. Rootes, Joshua Howard, or William Winchester, or any other person or persons claiming from, by, or under them, or either of them. And the said Thomas R. Rootes, for himself and his

heirs, warrants and defends the said island and its appurtenances from all persons claiming from, by, or under him, in pursuance of the said recited deeds to him, heretofore set forth. And the said Joshua Howard and William Winchester, for themselves and each of them, their heirs, executors, and assigns, will warrant and defend the said island and its appurtenances from the claim and demand of all and every person or persons whatever, claiming from, by, or under them or either of them, unto the said Howard and Lawrence, their heirs and assigns, for ever. In witness whereof, the parties aforenamed have hereunto set their names and affixed their seals, the day and year first above written.

Signed, sealed, and delivered in the presence of us.

[SEAL.]
[SEAL.]
[SEAL.]

No. 16.

Letter from J. Howard to Rootes.

FREDERICKSBURGH, *April 3d,* 1813.

THOS. R. ROOTES, Esq.

SIR: Our cause will come on against Dunbar or *Reathe* Swann 12th May. If you will not be up, you will be so good as examine the *dissition* of the *Coart* of Appeals, Hollingsworths against Dunbar; and, if it will be of any importance to us in this cause, send it to us in time for May term. We shall expect an answer from you on your examination, and your advice on the business. *Pleas* say when you will give us a deed for the island, as agent for my father, as I am very *antious* to get that business closed.

Yours, with esteem,

J. HOWARD.

THOMAS R. ROOTES, Esq., *Richmond, Virginia.*

No. 17.

S. Howard to Rootes.

BALTIMORE, *January 3d,* 1809.

DEAR SIR: Yours of the 22d Dec. came duly to hand. I have not forgotten your wheel and hackle. Your horse is at my father's, and in a thriving condition; he will be in high order by the spring.

If it is practable, please to execute a deed to me for the mill and island; also draw such deeds as will be right, one for R. Winchester and one for S. Winchester, also one for my father.

I want these deeds as early as possible. If I understand you right, my father can sell and give a good title under the mortgages, and his original title for ⅓ of the property, and that it could be done without injury to any suits now depending.

Yours, &c.

SAML. HOWARD.

THOMAS R. ROOTES, Esq., *Fredericksburg, Virginia.*

12—77

The foregoing is a complete copy of the record in the cause aforesaid, as it now stands.

In testimony whereof I hereunto set my hand and affix the seal of the said court, this fourteenth day of September, 1825.

[L. S.] RD. JEFFRIES, *Clk.*

That the said mill might have been reinstated in as good condition as before for $500, and might have been built new out and out for $10,000; and produced various evidence tending to show to the jury, that the property, in the actual condition of a clouded title and depreciated value, was not worth the purchase, and that from the circumstances of Lawrence and Poindexter, they were unable to complete their respective purchases, or to respond in damages for their breach of contract.

And the defendants further produced and read in evidence to the jury the depositions of William Smith and George Payne and James Rawlings, as follows, hereto annexed, Nos. 18, 19, 20.

No. 18.

Deposition of Wm. Smith.

The deposition of William Smith, taken at Booton's mill, in the county of Madison, on this 14th day of November, 1825, in the presence of Edmund Banks, agent for the plaintiffs, and of James Sanderson, agent for the defendants, and by their consent to be read as evidence in the suit now depending in the United States circuit court for the District of Columbia for the county of Alexandria, wherein Lawrence and Poindexter are plaintiffs, and the Columbian Insurance Company of Alexandria are defendants.

This deposition, by the consent of parties, being taken before one magistrate, and to have the same effect as if taken before two.

The deponent states that the mill of Lawrence and Poindexter was burnt on the 14th day of February, 1824, at about 11 o'clock in the night. He does not know how or by whom the fire was communicated.

Question by the defendant's agent. How long did you live at the mill called the Elba Mill, and how long with Lawrence and Poindexter; at which part of the building did you first discover the fire, and in which of the stories?

Answer. I hired with Lawrence and Poindexter from about the 1st of December, 1822, until the mill was burnt in February, 1824, with the exception of a few months; and for about thirteen years previous to the partnership between Lawrence and Poindexter I lived at the mills then called the Island Mills, either with Howard and Lawrence or with Joseph W. Lawrence. The fire broke out in the south end of the mill, and in the 5th story.

Had you been in the mill on that day; and how had you been occupied; was the mill in complete order to manufacture; at what hour did you leave the mill; did you lock it up, and who had possession of the key from the time the mill was shut up until you perceived the fire?

I was in the mill that day until eleven and twelve o'clock in the forenoon, and had until that hour been occupied in putting a pair of stones in order to grind wheat; the mill, with the exception of the stones which we were dressing, was in good order for manufacturing. I did not lock up the

mill, having left Mr. Payne, my assistant, in the mill dressing the stones. Mr. Payne, about an hour by sun in the evening, locked the mill and brought the key to my house, where it remained until the fire broke out.

How long before the fire happened had you used the mill for manufacturing flour; was there any flour or wheat in the mill; and if not, when was it delivered? Did you expect to manufacture any flour shortly; when had you cleaned up the mill?

I had finished cleaning up the mill on Tuesday previous to the fire, between 9 and 11 o'clock in the afternoon, the fire happening on the Saturday night following. There was not a bushel of wheat in the mill. I think there had been sent out of the mill on the day of the fire about 74 barrels of flour to Mr. Gordon of Falmouth, besides 16 barrels of old flour, all sent to Mr. Gordon by order of Mr. Poindexter. When the fire happened we were putting a pair of stones in order, by order of the owners, as they said, to manufacture wheat; but it was not my impression that we should manufacture much more that season.

What quantity of flour had you manufactured for the 12 months preceding; also for the last 6 and 3 months? Was the establishment profitable or unprofitable to the proprietors, and what was the net profits pr. annum?

I am not informed upon the subject of this question.

How long before the fire happened had the bags been taken out of the mill; also the wagon tent, with the books, receipts and papers, and other moveable articles? Were these articles ever taken out before, and were any reasons assigned for taking these articles out of the mill? Did not Poindexter demand of you the books and papers the day before?

Answer. In relation to the tent that was put on that day, and it had not been used for eight weeks before, but had lain in the mill; when it was put on there was a sprinkling of rain. The books were taken out of the mill by me after the fire had commenced, and handed to one Billingsly, by whom they were given to Poindexter. Poindexter never demanded the books from me. The flour receipts were given up to Mr. Poindexter the day before the mill was burnt. The mill money was also demanded by Mr. Poindexter.

After you saw the mill on fire, were any exertions made to extinguish it? Did you know that the mill was insured? Were any observations made on the occasion, and what were they?

When I first saw the fire, every effort to save her would have been vain. I had understood that the mill was insured for one third of her value.

How many stories was the mill? Were not the gables of wood, and were there not two stories of wood above the square, and for what purposes were they used?

There were five, four of stone and one of wood, and a garret. The hopper-boy worked in the garret. The superfine bolts worked in the other wooden story. The covering of the mill, including the gables, were of wood.

On the night of the fire, where was Mr. Lawrence, also Mr. Poindexter? Do you not believe the mill had been purposely set on fire? and have you reason to believe or suspect who did it?

Mr. Lawrence and Mr. Poindexter were both at home. I have been under the impression that the mill was designedly burnt, but it was a mere impression. I was impressed with a belief that it was fired by Mr. Poindexter; but this impression was taken up without any fact to support it,

except what I have before stated in this deposition; and my impression is still the same. On the day of the fire the mill chimney had been accidentally on fire. I should not suppose the fire to have caught from the chimney, as the chimney was in the north end, and the fire originated or broke through the south end of the fifth story, as before stated. In a dispute with Mr. Poindexter I told him I thought he burnt the mill, and he solemnly invoked the name of his maker to his innocence; but my impression is not removed.

Had Messrs. Lawrence and Poindexter a clear and indisputed title in the premises; and did they consider their title a good one, and free from all incumbrances; or have you understood the title was defective, and in what way?

I know nothing about it.

What were the circumstances of Lawrence and Poindexter before the fire? Had they the means to carry on business and keep the mill constantly at work; had they ever the means of their own to do so, to make the business profitable?

I suppose that they had not the means to carry on the business on their own account, and that their circumstances were bad.

Were not the lower windows of the mill nailed up; and were not the bars from one of the windows ripped off so that a person might enter, and do you not believe that they were taken off on the night of the fire; or did you observe they were taken off before? Do you not believe the person who fired the mill entered by that window? Have you seen any of the bars since?

The windows were nailed up, and one of the bars was found which had been ripped off by some one, and I carried the bar to Fredericksburg. To the best of my knowledge the bar was not off before the fire, because if it had been off hogs might have gone in.

Question by the plaintiffs' agent. What do you suppose was the value of the mill which was burnt? Was it not one of the best mills in your knowledge?

I think she was worth at least twenty-five thousand dollars. She was, in my opinion, one of the best built mills in the State of Virginia.

And further the deponent saith not.

WILLIAM SMITH.

No. 19.

Deposition of George Payne.

The deposition of George Payne, a witness for the plaintiffs, taken at the same time and place as that of William Smith, and in the presence of the same parties:

The deponent states that the mill of Lawrence and Poindexter, called the Elba Mill, was burnt on Saturday the 14th day of February, 1824, in the night. On the morning of that day the mill chimney had been accidentally on fire. The chimney was on fire before Mr. Smith left the mill on that day, which was about eleven or twelve o'clock. I remained in the mill measuring the stuff until nearly night, when I locked up the mill and carried the key to Mr. Smith, but returned again and remained until dark. I had upon leaving the mill that night carefully extinguished the fire in the

mill hearth by pouring water upon it. When the mill was burnt there was a considerable quantity of bran, shorts, ship stuff, and old flour, and between four and five hundred empty flour barrels, as I believe. There was a corn house with a good deal of corn so near the mill that the house would be endangered by such a fire as was likely to be on burning the mill.

Question by defendant's agent. How long had you lived at the mill? How long before the fire had you used the mill; and did you calculate on manufacturing more flour that season?

I had lived at the mill during the existence of the partnership between Lawrence and Poindexter. We had not worked her from the Tuesday before the fire. From what Lawrence and Poindexter had told us, we did calculate on grinding more wheat that season, tho' at the time of the fire there was no wheat in the mill We had received orders to put a pair of stones in order for grinding wheat, and at the time of the fire we were engaged in dressing a pair accordingly.

Was the establishment profitable or unprofitable to the owners; had not the neighboring mills greatly the advantage, and could they not make money when your mill would make nothing?

I know nothing of the profits of the mill. The mill was about a mile from Fredericksburg, and of course the carriage would make a small difference between that and the neighboring mills.

Did you know that the mill was insured? How many stories was the mill? Were not the gables of wood, and were there not two stories of wood above the square, and for what purposes were they used?

There were five stories, four of stone and one of wood, and a garret. The hopper-boy worked in the garret. The superfine bolts worked in the other wooden story. The covering of the mill, including the other gable ends, was of wood.

Do you suppose the fire which burnt the mill could have been produced by the fire from the chimney? What time did it commence raining on the Saturday of the 14th of February?

I think the fire in the mill could not have originated from the chimney, from what I have heard of the place where it broke out. It began to rain a little early in the evening, and as the evening advanced it rained harder; and about nine o'clock at night, when I left Mr. Smith's, it rained quite briskly.

Do you believe the mill was intentionally set on fire? Were not the lower windows of the mill nailed up?

It was my opinion she was set on fire, but by whom I have no idea. The lower windows were nailed up.

And further the deponent saith not.

his
GEORGE x PAYNE.
mark.

The aforegoing depositions of William Smith and George Payne, witnesses for the plaintiffs, were duly sworn to before me; the plaintiffs' agent, Edmund Banks, and the defendant's agent, James Sanderson, being both present and assenting; and also agreeing that it should be read as tho' it had been taken before two magistrates. Given under my hand, as a magistrate of the county of Madison, in Virginia, this 14th day of November, 1825.

WM. BOOTON.

No. 20.

Deposition of James Rawlings.

The deposition of James Rawlings, taken on Saturday the 15th day of April, 1826, at the office of the Mutual Assurance Society against fire on buildings of the State of Virginia, in the city of Richmond, between the hours of 9 A. M. and 6 P. M., to be read as evidence in a suit depending in the circuit court of the United States for the District of Columbia and county of Alexandria, in which Lawrence and Poindexter are plaintiffs, and the Columbian Insurance Company are defendants.

This deponent, being first duly sworn, deposes and says, in answer to the interrogatories to him propounded, as follows:

Question 1st, by the defendant's agent. Are you agent for the Mutual Assurance Society against fire on buildings of the State of Virginia? If so, how long have you acted in that capacity?

Answer. I am principal agent of the said Mutual Assurance Society.

Question 2d, by the same. The following offering was made: "To the president and directors of the Columbian Insurance Company of Alexandria. What premium will you ask to insure the following property, belonging to Lawrence & Poindexter, for one year, against loss or damage by fire on their stone mill, four stories high, covered with wood, situate on an island about one mile from Fredericksburg, in the county of Stafford, the mill called Elba Mill; seven thousand dollars is wanted; not within 30 yards of any other building, except a corn house, which is about 20 yards off?

JOHN H. LADD & Co., Agents."

Is the above description verified by proof that the mill was built of stone to the square, with gables and roof of wood; and would it have been considered, by the usages of your office, as being verified?

Answer. I should not consider proof that the mill was built of stone to the square, and the gable ends being of wood, sufficient verification of a *stone mill covered with wood*. I hold it to be necessary, to constitute a *brick or stone building*, that the walls should be of *brick or stone to the top of the roof*, at each gable end. This, however, is the result of my own construction of the rules of the Mutual Assurance Society; and no case has ever occurred in this office going to contest the correctness of that construction, which is founded upon my own exposition of the 1st section of the 7th article, and the 1st section of the 8th article of the constitution of the society, by virtue of which I should class a building thus verified among those "built partly of brick or stone and partly of wood, and covered with wood." Buildings of this description are rare, and I know of very few insured in this society's office. The mill of James Vasse, esq., formerly owned by Cook & Hollingsworth, near Fredericksburg, is the only mill now recollected by me as having wooden gable ends and the balance of stone. While I have given the opinion above written, it must be expressly understood that it is not one founded upon any solemn adjudication on a case in point, growing out of the operations of the Mutual Assurance Society.

Question 3d, by the same. At the time that Joseph Howard and Joseph W. Lawrence owned the said island, was the said mill ever insured in your association? If it was, what description was given, and what premium was received for insuring the same?

Answer. The mill above referred to was insured in the office of the Mutual Assurance Society, by Joseph Howard and Joseph W. Lawrence, per their declaration No. 565, dated 3d January, 1818. It was by the said declaration thus described: "A merchant mill, showing four stories on one side, and 3 and 2 on the others, built of stone and covered with wood, gable ends of the roof of wood, 44 + 45." It was valued at the sum of $20,000. The sum of $15,000 was insured, and the premium paid was $450.

Question 4th, by the same. Is the copy now presented to you, and by you attested as principal agent of the M. A. Society, a true copy of the said declaration of Howard and Lawrence, No. 565?

Answer. It is a true copy of the original on file in my office.

Question 1st, by the agent of the plaintiffs. Were the rates of premium for insurance, in the office of the Mutual Assurance Society, the same in the year 1818 and in the year 1822?

Answer. They were not.

Question 2d, by the same. Are the two copies of declarations now shown to you, one numbered 1184, dated 29th July, 1818, and the other numbered 4331, dated 16th December, 1822, the former subscribed by Cooch & Hollinsworth, and the latter subscribed by James Vass, true copies of declarations for assurance filed in your office?

Answer. They are true copies from the originals in my office, and were certified by me on the 1st day of December, 1825.

Question 3d, by the same. Are the two policies of assurance now shown to you, one numbered 1184, dated 9th of August, 1818, and issued to William Cooch and John Hollingsworth and William Hollingsworth, and the other numbered 4331, dated 31 December, 1822, and issued to James Vass, the true original policies issued by the Mutual Assurance Society, under the declarations referred to in the preceeding question?

Answer. They are the genuine original policies issued by me.

And further this deponent sayeth not.

JAMES RAWLINGS.

The foregoing deposition of James Rawlings was taken at the time and place aforesaid, and by him subscribed and sworn to in due form of law, before us the subscribers, justices of the peace in and for the city of Richmond, in pursuance of a commission and notice herewith enclosed.

Given under our hands and seals on this 15th day of April, 1826.

JOHN GODDIN. [SEAL.]
W. CAULIN, Jr. [SEAL.]

And the plaintiff further proved that it was a usual practice in the country to build the gable ends of stone or brick mills of wood, and that Cook and Hollingsworth, owners of a mill near the one in question, and similarly constructed in respect of the gable ends, had, in July, 1818, described the same in their declaration for insurance in the said Mutual Assurance Society as follows:

A.
Merchant mill, built of stone, and covered with wood—two stories high—gable ends wood—45+50.

This building is not contiguous, within thirty yards, to any house whatever.

A. R. TAYLOR, *Sp. Agt.*
COOCK & HOLLINGSWORTH.

And that James Vass had afterwards, in December, 1822, reinsured the same mill in the same society, under the like description.

Whereupon the defendants prayed the opinion of the court, and their instruction to the jury, that if the said contracts between Howard and Lawrence and between Lawrence and Poindexter have not been performed on either side, and if from the actual state and condition of the title and the value of the property bargained for between Howard and Lawrence, and between Lawrence and Poindexter, in the said contracts, and from the circumstances of the parties the said contracts between the said parties could not have been specifically performed, or effectually enforced on either side, so as to have vested the legal estate, pursuant to said contracts, or to have vested in said Lawrence and Poindexter an equitable estate, with a right to call for the legal estate; and that the said contracts between the said parties were not practically available, but were, as to the practical interest and purpose which they purported, an interest to effectuate, incapable of being executed, then the said Lawrence and Poindexter had not, at the time of the said insurance and of the said loss such an interest in the said mill, as to entitle them or either of them to recover in this action for the loss averred in the declaration, and proved by the evidence; which instruction the court refused, being of opinion that it would leave a question of law to the jury, viz., whether, under the circumstances therein stated, the said parties therein mentioned, or either of them, could be compelled, specifically, to perform the agreements therein mentioned: and the court is of opinion, that under the circumstances stated in the said evidence, the plaintiffs had at the time of effecting the insurance, and at the time of the loss, an insurable interest in the said mill.

Whereupon the defendants prayed the opinion of the court, and their instruction to the jury, that in order to verify the description of the property insured, as given in the policy, it is necessary that the whole of the exterior walls of the mill-house upon which the roof or covering rests, from the foundation to the top of the roof should be of stone; and that if the plan of the said house were such as that *two* of the exterior walls terminated in upright gable ends, run up perpendicularly from the eves to the top of the roof, and sloping at the same angle as the pitch of the roof, such gable ends not properly forming, according to the ordinary rules and terms of architecture, a part of the covering or roof, it was necessary to verify the said description, that such gable ends should have been of stone; and if in point of fact such gable ends, as well as the covering or roof, were of wood, which under any circumstances of actual conflagration might have increased

either the risk of catching fire, or the difficulty of extinguishing or stopping the progress of fire once commenced, it amounted to a material misrepresentation, and avoids the policy; and it is not material whether the said misrepresentation was wilful and fraudulent, or from ignorance and without design, nor whether the actual loss was produced by such misrepresentation, or by having gable-ends of wood instead of stone. Which instruction the court refused, being of opinion that it was competent for the jury, from all the facts given in evidence, to decide whether, in order to verify the said description in the said policy, it was necessary that the whole of the exterior walls from the foundation to the top of the roof should be of stone. And being also of opinion, that under the first of the rules annexed to the said policy, and referred to therein, no variation in the description of the property insured from the true description thereof not made fraudulently, would vitiate the policy, unless by reason of such variation, the insurance was made at a lower premium than would otherwise have been demanded.

Evidence of James Sanderson.

The defendants then proved by James Sanderson, the witness before sworn and examined on the part of the plaintiffs, that in making the insurance aforesaid, the defendants were not governed by the said printed rates of premium, and did not insure the said mill as a building under the class No. 4 of the said printed rates, though the said premium therein indicated was charged; but that the board, in their discretion, fixed the premium as for an extra risk, considering the frequent accidents to mills, from the circumstance of millers being in the habit of grinding all night: and if the insurers had understood the mill to have been built with wooden instead of stone gable-ends, it would have been at their discretion to have charged a higher premium, or to have declined the risk: and the plaintiffs' counsel having argued to the jury upon the presumed authority of the court's opinion upon the second of the aforesaid instructions, moved by the counsel for the defendants and overruled as aforesaid, that the misrepresentation of the class of the building insured, if found by the jury to be such as above objected on the part of the defendants, did not vitiate or avoid the policy either as a breach of warranty or misrepresentation, unless it had been designedly and fraudulently made, or had induced the defendants to insure at a lower *premium* than they would otherwise have done: And that in fact the insurance was done at the *maximum* rate indicated by the said printed rates.

The counsel for the defendants thereupon prayed the opinion of the court, and an instruction to the jury, that if the jury find from the evidence that the materials and description of the mill, for the destruction of which this loss is claimed, as it actually existed at the time of insurance, differed from the representation of the same made by the plaintiffs or their agents at the time of effecting the said insurance, in this, that the walls at the two ends of the building all the way from the eaves to the top of the roof, constituting what are commonly called the gable-ends, were constructed of wood instead of stone, and that the risk from fire was greater with such wooden gable ends than if they had been constructed with stone, it ought to be deemed a material misrepresentation, and avoids the policy, whether such misrepresentation proceeds from fraud or casual inadvertence in the assured; and in such case it is not necessary for the defendants to prove further, that a higher premium would have been charged if a true and accurate represen-

lation of the building had been made; nor does it vary the effect of such representation, that the highest rate of premium stated in the said printed rates was actually charged for the said insurance. Which instruction the court refused to give, for the following reason: that under the first of the rules annexed to the said policy, and referred to therein, no variation in the description of the property insured from the true description thereof, not made fraudulently, would vitiate the policy, unless by reason of such variation the insurance was made at a lower premium than would otherwise have been demanded.

Whereupon the defendants prayed the opinion of the court, and their instruction to the jury, that the said J. W. Lawrence as the survivor of the said Lawrence and Poindexter, if entitled upon the principles aforesaid to recover any thing in this action, is not entitled to recover any thing more than a moiety of the said loss; which instruction the court also refused. To all which refusals of the court to instruct the jury as requested by the defendants, and to the instructions actually given, the defendants except, and pray that this their bill of exceptions be sealed, &c.; which is done accordingly, this 21st of April, 1826.

W. CRANCH. [SEAL.]
J. S. MORSELL. [SEAL.]

Mandate of reversal received, Cause docketed and Ven. fac de novo *awarded.*

And afterwards, to wit, at a United States circuit court of the District of Columbia, continued and held for the county of Alexandria the 20th day of April, 1830, the defendants, the said Columbian Insurance Company, produced to the court the mandate of the honorable the Supreme Court of the United States, reversing and annulling the judgment of this court in this case, and remanding the cause to this court, with directions to award a *venire facias de novo*, and for further proceedings to be had therein according to law and justice; which is ordered to be certified, and the mandate to be filed. And the court doth order that the case be redocketed, and that a *venire facias de novo* be issued, returnable at the next term of this court. The said mandate is in these words:

Mandate.

UNITED STATES OF AMERICA, *ss.*

[L. S.] The President of the United States of America to the honorable the judges of the circuit court of the United States for the District of Columbia, holden in and for the county of Alexandria, greeting:

Whereas lately in the circuit court of the United States for the District of Columbia, holden in and for the county of Alexandria, before you, or some of you, in a cause wherein Joseph W. Lawrence was plaintiff, and the Columbian Insurance Company of Alexandria was defendant, it was considered by the said circuit court "that the said plaintiff recover of the said defendants the aforesaid sum of seven thousand dollars damages aforesaid, by the jurors aforesaid assessed, with interest thereon as aforesaid; and also his costs by him about his suit in this behalf expended. And the said defendants in mercy, &c. Plaintiffs' costs $77 81; defendant's costs $29 48;" as by the inspection of the transcript of the record of the said circuit court, which was brought into the Supreme Court of the United States, by virtue of a writ of error, agreeably to the act of Congress in

such case made and provided, fully and at large appears; and whereas, in the present term of January, in the year of our Lord one thousand eight hundred and twenty-nine, the said cause came on to be heard before the said Supreme Court on the said transcript of the record, and was argued by counsel. On consideration whereof, this court is of opinion that the said circuit court erred in this, in instructing the jury that the interest of the assured in the property insured is such as is described in the original offer for insurance and in the policy; and also in this, that the said circuit court erred in this, in the opinion to the jury, that the evidence was sufficient to be left to them, from which they might infer that the defendants waived the objections to the certificate and other preliminary proof required by the ninth rule annexed to the policy; whereupon it is considered by this court that the said judgment of the said circuit court in this cause be, and the same is hereby reversed and annulled; and that the said cause be, and the same is hereby remanded to the said circuit court, with directions to award a venire facias de novo, and for further proceedings to be had therein, according to law and justice. January 28, 1829.

You, therefore, are hereby commanded that such proceedings be had in said cause as, according to right and justice and the laws of the United States, and in conformity with the opinion and judgment of the said Supreme Court, ought to be had, the said writ of error notwithstanding.

Witness the honorable John Marshall, Chief Justice of said Supreme Court, the second Monday in January, in the year of our Lord one thousand eight hundred and twenty-nine.

WM. THOS. CARROLL,
Clerk Sup. Court United States.

Suit discontinued.

And afterwards, to wit, at a court continued and held for said county the 5th day of November, 1830, came the plaintiff aforesaid, by his attorney, and on his motion this suit is discontinued.

Demurrer to Declaration.

All which being read and heard, the defendants, by their attorney aforesaid, say that the said declaration, and the matters therein contained, in manner and form as the same are therein stated and set forth, are not sufficient in law for the said Joseph W. Lawrence, survivor as aforesaid, to have or maintain his aforesaid action thereof against them; and that they, the said defendants, are not bound by the law of the land to answer the same, and this they are ready to verify: Wherefore, for want of a sufficient declaration in this behalf, the said defendants pray judgment; and that the said Joseph W. Lawrence, survivor, &c., as aforesaid, may be barred from having or maintaining his aforesaid action thereof against them, &c.

And the said Columbian Insurance Co. of Alex'a shows to the court here, and states the following causes of demurrer to the said declaration:

1. Because the plaintiff, in his said declaration, has not set forth the contents, substance, or effect of the said conditions in the said declaration mentioned, as being subjoined to or accompanying the said policy of insurance, but has left it altogether uncertain what the said conditions import on their face, or what their legal effect.

2. The plff. has not, in his said declaration, averred or in any manner shown a compliance on his part with the said conditions, or with the said

fundamental rules endorsed on and forming a part of said policy of insurance.

3. The plff. has not, in his said declaration, averred or in any manner shown, but has left it altogether uncertain what proofs of loss were required by the said conditions therein mentioned, or what notice thereof was given, in conformity with the said conditions, or what proofs or notice were required by said conditions in conformity thereto.

4. The plff., in his said declaration, has not averred or in any manner set forth or shown what property he and said Poindexter had in the said insured premises, nor any sufficient proprietary interest.

5. The said plff., in his said declaration, has not averred or in any manner set forth or shown that the defendants were required either to pay, satisfy, or reinstate the loss and damage complained of, or that the defendants refused to do either.

6. Because the plff., in his declaration aforesaid, has not averred or in any manner shown the payment of the premium, or the compliance on the part of the plff. with any other of the conditions, stipulations, and agreements, on his part and behalf to be performed, according to the tenor and effect of said policy.

7. Because the plff., in his said declaration, has not averred or shown a sufficient compliance on his part with the condition or conditions precedent imposed on him by the 9th of the said fundamental rules; but the particular compliance and execution on his part of the said rule, and of the conditions precedent therein contained, is altogether insufficient and vicious.

8. That the said declaration is altogether illegal and void, and in other respects is uncertain, informal, and insufficient, &c.

Non assumpsit.

Plea 1. And the said Col. Insurance Company, by their attorney aforesaid, and by the leave of the court here first had and obtained, come and defend the wrong and injury when, &c., and say that they did not undertake or promise in manner and form as the said Joseph W. Lawrence, survivor, &c., hath above thereof complained against them; and of this they put themselves on the country, &c., and the plff. doth the like.

Non asst. inf. 5 an.

2. And the said defendants, by their attorney aforesaid, and by the leave of the court here first had and obtained, for further and other plea in this behalf, say, that they did not promise or assume upon themselves, in manner and form as the plff. has complained against them, at any time within five years next before the commencement of plff's action aforesaid against them; and this they are ready to verify: wherefore, &c.

Actio non acc. inf. 5 an.

3. And the said defendants, by their said attorney and by leave of the court here first had and obtained, for further plea, say, that the plaintiffs' cause of action aforesaid, whereof he has above complained against them in manner and form aforesaid, did not accrue to him at any time within five years next before the commencement of his action aforesaid against them; and this they are ready to verify: wherefore, &c.

Non performance of condition precedent.

4. And the said defendants, by their attorney aforesaid, and by leave of the court here first had and obtained, for further and other plea in this behalf, say, that in and by the said conditions subjoined to and accompanying the said policy as aforesaid, and which were endorsed upon the said policy, and constituted part of the same, and of the stipulations and agreements therein mentioned, under the name and style of "Fundamental Rules of the Columbian Insurance Company of Alexandria for risk against Fire," it was, among other things, stipulated, conditioned, and agreed between the said parties to the said policy, in and by the 9th of the said conditions or fundamental rules, that the said plff. and the said Thomas Poindexter, in the said policy named, in case they sustained any loss or damage by fire within the terms and conditions of the insurance effected by the said policy, should forthwith give notice thereof to the said defts., and should, as soon as possible thereafter, deliver in as particular an account of their said loss or damage, signed with their own hands, as the nature of the case will admit of, and make proof of the same by their oath or affirmation, and by their books of accounts or other proper vouchers, as should be reasonably required; and should also, as soon as possible thereafter, procure a certificate under the hand of a magistrate or sworn notary of the town or county in which the fire happened, not concerned in such loss directly or indirectly, importing that such magistrate or notary is acquainted with the character and circumstances of the persons insured, to wit, of the said Lawrence and Poindexter, and does know or verily believe that they, the said Lawrence and Poindexter, really and by misfortune, without any kind of fraud or evil practice, have sustained by such fire loss or damage to the amount in such certificate mentioned; and that until such certificate and affidavit are produced as aforesaid, the loss claimed under said policy shall not be payable; yet the said Lawrence and Poindexter, during the lifetime of the said Poindexter, or either of them, or the said plff., since the death of the said Poindexter, did not forthwith give such notice to said defendants of the said loss by fire alleged and complained of in said declaration, and did not as soon as possible thereafter, or within any due and reasonable time after the happening of the said loss, deliver in any such account; nor as soon as possible thereafter, nor within any due and reasonable time after the happening of the said loss, or said notice thereof, procure or produce any such certificate of a magistrate or sworn notary, as it was required and conditioned in and by the said conditions and fundamental rules should be done, as aforesaid; and this the defendants are ready to verify: wherefore, &c.

Misrepresentation of Building.

5. And the said defendants, by their attorney aforesaid, and by leave of the court here first had and obtained, for further and other plea in this behalf, say, that in and by the said fundamental rules in the last preceding plea mentioned and described, and in and by the first of the same, it was, among other things, premised, conditioned, and required that the said parties insured, to wit, the said Lawrence and Poindexter, should state in writing at and before the execution of said policy, of what materials the walls and roof of the said mill were constructed; and the said parties insured, in the pretended fulfilment and compliance of and with the said condition, did, at and before the execution of the said policy, and as an induce-

ment to the defendants to make the said insurance and execute the said policy, falsely and knowingly state in writing and represent to said defendants that the walls of the said mill were constructed of stone and the roof thereof of wood, and did then and there stipulate, condition, and agree with the defendants, in and by the said policy and the said conditions and fundamental rules, that the said statement in writing and the description therein given of the materials whereof the walls and roof of the said mill were constructed, were true and accurate; upon the faith and confidence of the truth and accuracy of which statement in writing, and of the description therein given of the materials of said walls and roof, the defendants accepted the offer made to them by the said Lawrence and Poindexter for the effecting of the said insurance, and executed the said policy accordingly; all which was then and there well known to the said Lawrence and Poindexter: yet the defendants in fact say, and the said Lawrence and Poindexter, at the time and times of making their said statement in writing, and of the acceptance by the defendants of the said offer of insurance and of the execution of the said policy, and always before and after, well knew that the walls of the said mill were not at the time and times aforesaid, nor at any time whatever constructed wholly of stone; but that the gable-ends of the same, that is to say, all of the said walls, from the square at each end to the top of the gable-ends of the same, were at the time and times aforesaid, and always before and after, constructed of timber and wooden boards; and that the said written description so as aforesaid given by the said Lawrence and Poindexter was incorrect and false in the particular above mentioned; by means of which misrepresentation the defendants were misled and deceived in the matter of the said insurance. And the defendants in fact say, that the said misrepresentation of the said Lawrence and Poindexter was essentially material to the risk insured against in and by the said policy in this, to wit, that the said mill was more exposed to the danger of taking fire, and more liable to destruction by fire, in consequence of having the walls constructed in part of timber and boards as aforesaid, than if the same had been constructed of stone, as falsely represented and described by the said Lawrence and Poindexter in their said written statement, and in the said policy as aforesaid; and this the defendants are ready to verify: wherefore, &c.

Fault and negligence of Assured.

6. And the said defendants, by their attorney aforesaid, for further and other plea in this behalf, say, that the fire which caused the loss and destruction of the said mill, whereof the plff. in his said declaration has above complained, was not the effect of inevitable accident or casualty, nor of any of the causes or risks insured against in and by the said policy, but was produced by the fault and negligence of the said parties insured, their agents and servants; and this they are ready to verify: wherefore, &c.

Joinder in demurrer to Declaration—Issue joined on first Plea—Demurrer to second Plea.

And the plaintiff joins in defendants' said demurrer to the said amended declaration, and joins issue on deft.'s said first plea; and the plff. as to the second plea of the said defts., so as aforesaid pleaded, saith, that he ought not to be precluded from having and maintaining his action aforesaid by any thing alleged by the said defts. in their plea aforesaid, because he saith that the said plea and the matter in the same contained are not sufficient in

law to preclude the said plff. from having and maintaining his action aforesaid against the said defts., and that he is not bound by the law of the land to make any answer to the same; and this he is ready to verify, &c.: wherefore, for want of a sufficient plea in this behalf, the said plff. prays judgment for his damages aforesaid against the said defts., &c. And for causes of demurrer to the said plea, the said plff. sets down and shows the following, to wit:

1. Because the said plea is not a correct or proper plea to the said declaration.

2. Because it appears in and by the said declaration that the plff.'s cause of action did not accrue until the 13th of February, 1829, within five years next preceding the time of pleading the said plea.

3. Because the said plea is insufficient in law to bar the said plff. from his action aforesaid.

Joinder in demr. to second Plea—Genl. repln. to third Plea and Issue

And the defendants join in the said demurrer to their said second plea. Plaintiff files a general replication to defts'. said third plea, and defts. join issue thereon.

Replication to fourth Plea.

And the plff. saith that he ought not to be precluded from having and maintaining his action aforesaid against the said defts. by any thing alleged by the said defts. in their said fourth plea, because he saith, that as soon as possible after the happening of the said loss in the said plea mentioned, that is to say, on the twentieth day of February, in the year 1824, he the said plff. and the said Poindexter gave notice of the said loss to the said defts.; and in compliance with the conditions subjoined to the said policy, as hereinbefore mentioned, they did prepare and make their affidavit in writing in due form of law, signed with their own hands, which said affidavit was in substance as follows, that is to say:

"We hereby certify, that by the burning of our mill, situated on the island in the county of Stafford, about one mile from the town of Fredericksburg, and State of Virginia, called the Elba Mill, four stories high, the walls of stone, covered with wood, on which seven thousand dollars were insured by us in the office of the Columbian Insurance Company of Alexandria, on the 9th day of April last, per policy No. 279, and which was destroyed by fire on the night of Saturday last, the 14th inst., we lost or were damaged at least twelve thousand dollars, exclusive of the contents of the said mill. We are entirely ignorant of the circumstances which occasioned the fire. And we further certify, that we have no other insurance, directly or indirectly, on the aforesaid property, except the abovementioned.

JOSEPH W. LAWRENCE.
THOMAS POINDEXTER, Jun."

Which said affidavit was sworn to by them, the said Lawrence and Poindexter, before Murray Forbs, a justice of the peace for the said county of Stafford. And the said plaintiff and the said Poindexter did then and there procure from him the said Murray Forbs, a justice of the peace, duly commissioned in and for the said county of Stafford and State of Virginia, a certificate in writing, signed with his proper hand and name, in substance as follows, to wit:

"I, Murray Forbs, a magistrate duly commissioned in and for the county of Stafford and State of Virginia, do hereby certify that I am acquainted with Joseph W. Lawrence and Thomas Poindexter; that the fire originated in their mill, burnt on the night of the 14th inst., by accident, or without fraud or design on their part, as far as I know or believe; and that the damage or loss they sustained by the said fire is at least ten thousand dollars. And I further certify, that the said mill was not within thirty yards of any other building, except a corn house, which was about twenty yards off.

"MURRAY FORBS."

And the said plaintiff and the said Poindexter did also then and there procure in writing the affidavit of one Thomas Sedden, in substance as follows, to wit:

"I, Thomas Sedden, of the town of Fredericksburg, in the county of Spotsylvania, and State of Virginia, do hereby certify that I am well acquainted with the mill called and known by the name of the Elba Mill, owned and occupied by Joseph W. Lawrence and Thomas Poindexter, situate on an island in the county of Stafford, about one mile from the town of Fredericksburg; that the said mill was built of stone, four stories high, and covered with wood; that between ten and eleven o'clock on Saturday night, the 14th inst., I was alarmed by the cry of fire, which I soon ascertained to be the mill aforesaid; that I have since viewed the ruins, and am of opinion that it would require at least ten thousand dollars to rebuild the same, and restore the proprietors in the situation they were in previous to the *the* said fire; that I have no knowledge or idea how the fire originated.

"THOMAS SEDDEN."

And the affidavit of one James Vass, in substance as follows, to wit:

"I, James Vass, of the town of Falmouth, in the county of Stafford, and State of Virginia, do hereby certify, that I am well acquainted with the mill called and known by the name of the Elba Mill, owned and occupied by Joseph W. Lawrence and Thomas Poindexter, situate on an island in the county of Stafford, and about one mile from the town of Fredericksburg; that the said mill was built of stone, four stories high, and covered with shingles; that between the hours of ten and eleven o'clock on Saturday night, the 14th current, I was alarmed by the cry of fire, which I soon ascertained to be the mill aforesaid; that I have since viewed the ruins, and I am of opinion that it will require the sum of ten thousand dollars, or thereabouts, to restore the proprietors to the situation they were in previous to the said fire; further, that I have no knowledge whatever how the fire originated.

"JAMES VASS."

And the said plaintiff further saith, that the said affidavits and the said certificate of the said Murray Forbes, so made as aforesaid, were procured and made as soon after the said loss by fire as the same could be done, and together with the notice of the said loss, as herein before mentioned, were presented and delivered to the said defendants on the said 20th day of February, in the year of our Lord one thousand eight hundred and twenty-four; and the said defendants making no objections to the said proofs, and refusing to pay, satisfy, or reinstate the loss so sustained by the said plaintiff and the said Poindexter as aforesaid, they, the said plaintiff and the said Poindexter, instituted a suit in the circuit court for the county of Alex-

andria, against the said defendants, to recover from them the amount of the said loss, in which said suit such proceedings were had, that the said plaintiff, as the surviving partner of himself and the said Poindexter, obtained a judgment in the said circuit court against the said defendants for the amount of the said loss, from which judgment the said defendants appealed to the Supreme Court of the United States; and, during the January term of the said Supreme Court, in the year 1829, the said Supreme Court reversed the judgment of the said circuit court; and, among other things, decided that the certificate of the said Murray Forbes, so as aforesaid given and laid before the said defendants as one of the proofs of the loss which the conditions subjoined to the said policy required to be made, was not such a certificate as the said conditions required; and that the said defendants had not waived their objections to the said certificate, as by the record and records of the proceedings and decisions of the said circuit and Supreme Courts is fully manifest and appears. And the said Supreme Court so having reversed the said judgment, further ordered and adjudged, that the said suit be remanded to the said circuit court for further proceedings, and that a venire de novo be awarded for the retrial of the issues joined in said suit; in pursuance and execution of which judgment of the Supreme Court, and of the mandate from the said Supreme Court to the said circuit court, the said suit was afterwards, to wit, at the April term, 1830, of the said circuit court, there reinstated and redocketed for a new trial of the said issues, and was from thenceforth regularly continued on the docket and proceedings of said circuit court, until the fifth day of November, 1830, on which said day, and before the institution of this present suit, the said suit was, by order of the said plaintiff, duly discontinued, and judgment thereupon rendered in favor of said defendants for costs, &c., as by the record of the proceedings of the said circuit court is manifest and fully appears. And the said plaintiff further saith, that after the decision of the said Supreme Court, so as aforesaid made, and as soon as possible thereafter as the same could be obtained, that is to say, on the day of February, in the year one thousand eight hundred and twenty-nine, he did procure from one Robert H. Hooe, a magistrate duly commissioned and sworn for the county of Stafford and State of Virginia, a certificate in writing, signed with his proper hand and name, in substance as follows, to wit:

"I, Robert H. Hooe, a magistrate of the county of Stafford, in the State of Virginia, do hereby certify, that in the month of February, 1824, I was acquainted with the character and circumstances of Joseph W. Lawrence and Thomas Poindexter; that I continued acquainted with the character and circumstances of the said Poindexter until the time of his removal from the State aforesaid, about the summer or fall of the year aforesaid; that I am yet acquainted with the character and circumstances of said Lawrence, and that I do verily believe, that they really and by misfortune, without any kind of fraud or evil intent, accidentally lost by fire their mill called the Elba Mill, situated on an island in Rappahannock river, and county of Stafford aforesaid, about one mile from the town of Fredericksburg, on the night of the 14th day of February, 1824; that by the said burning of the said mill they sustained a loss to the value of at least ten thousand dollars; that I was a magistrate of the said county at the time of the said fire, and have continued so since. Given under my hand this day of February, 1829. ROBERT H. HOOE."

That the said certificate, so made as aforesaid, on the 13th day of February, in the year aforesaid, at the town of Alexandria aforesaid, was presented and delivered to the said defendants; and he, the said plaintiff, then and there required the said defendants to pay, satisfy, and reinstate the loss which the said plaintiff and the said Poindexter had sustained as aforesaid; and this the said plaintiff is ready to verify, &c.

Replication to fifth Plea.

And the said plaintiff saith that he ought not to be precluded from having and maintaining his action aforesaid by any thing alleged by the said defendants in their said fifth plea, because he saith that, in and by the first of the said fundamental rules in the said plea mentioned, it was declared and required that persons desirous to make insurance on buildings, were to state in writing the following particulars, viz., of what materials the walls and roofs of each building were constructed, as well as the construction of the buildings contiguous thereto; whether the same were occupied as private dwellings, or how otherwise, where situated, and also the name or names of the present occupiers. And it was among other things further declared in and by the said rule, that if any person or persons should insure his or their buildings or goods, and should cause the same to be described in the policy otherwise than as they really were, so as the same be charged at a lower premium than would otherwise be demanded, such insurance should be of no force. And the said plaintiff saith, that in effecting the said insurance on the premises aforesaid, neither he, the said plaintiff, nor the said Poindexter caused the premises to be described in the said policy of insurance otherwise than as they really were, so as that the same should be or were actually charged at a lower premium than would otherwise be demanded; and this the said plaintiff is ready to verify, &c.

Replication to sixth Plea.

And the said plaintiff saith, that he ought not to be precluded from having and maintaining his action aforesaid by any thing alleged by the said defendants in their sixth plea aforesaid, because he saith that the loss and destruction of the premises in the declaration mentioned was within the causes and risks insured against in the said policy, and happened without any fraud or design on the part of them, the said plaintiff and the said Poindexter; and this the said plaintiff is ready to verify, &c.

Demurrer to Replication to fourth Plea.

And the said defendants, by their attorney aforesaid, come and say they ought not to be charged by reason of any thing by the plaintiff in his said replication to the defendants' said fourth plea above alleged and pleaded, because they say that the said replication, and the matter therein contained, are not sufficient in law to enable the said plaintiff to have and maintain his action aforesaid against them; and that they are not bound by the law of the land to make answer to the same; and this they are ready to verify, &c.: wherefore, for want of a sufficient replication in this behalf, the said defendants pray judgment whether the said plaintiff his action aforesaid against them ought to have and maintain. And for causes of demurrer in this behalf, the defendants allege and set down the following, to wit:

1. That the plaintiff in his said replication neither traverses the terms, substance, or effect of so much of the stipulations, agreement and conditions

constituting a part of the said policy, as is set forth and pleaded by the defendants in their said plea; nor pleads or shows any sufficient compliance on his part, or on the part of himself and said Poindexter, or either of them, with the terms of such stipulations, agreement, and conditions as pleaded by def'ts in their said plea.

2. That the pl'ff in his said replication has not replied to, or in any manner sufficiently answered, either by traverse or matter in evidence, so much of the said plea, or of the matters therein pleaded, as pleads and alleges that the said Lawrence and Poindexter had failed to procure and produce, as soon as possible after said loss, or within any due and reasonable time thereafter, such a certificate of a magistrate or notary as in the said plea is mentioned.

3. That the said replication is immaterial to, and a departure from the cause of action set forth in the declaration, and to and from the issuable matter pleaded by def'ts in their said plea in this, to wit, that pl'ff in his said replication, in alleging and pleading by way of replication a compliance on his part with so much of the said stipulations, agreement, and conditions pleaded by def'ts as aforesaid, as requires such certificate of a magistrate or notary as aforesaid, avers that he procured such certificate from one Robert H. Hooe as soon as possible after the said decision of the Supreme Court as the said certificate could be obtained.

4. That the pl'ff in his said replication has not replied, or in any manner pleaded or shown any new matter in avoidance of def'ts' said plea, or of the matter therein pleaded, and yet has concluded his said replication with a verification, instead of concluding to the country.

5. That the pl'ff in his said replication has left it altogether uncertain whether the matter therein alleged and pleaded be so alleged and pleaded as new matter in avoidance of def'ts' said plea, or by way of traverse of the said plea, or what part of said plea is intended to be confessed and avoided, or what part traversed.

6. That, as new matter pleaded in avoidance of the said plea, the said replication pleads no such new matter sufficient in law to give a full answer to said plea.

7. That, as a traverse of the said plea, the said replication should have concluded to the country.

8. That the said replication is altogether erroneous and insufficient in law, and wants form, &c.

Demurrer to Replication to fifth Plea.

And the said defendants further say, they ought not to be charged by reason of any thing by the said plaintiff, in his said replication to the def'ts' said fifth plea, above alleged and pleaded, because they say that the said replication, and the matter therein contained, are not sufficient in law to enable the said pl'ff to have and maintain his action aforesaid against them; and that they are not bound by the law of the land to answer the same; and this they are ready to verify, &c.: wherefore, for want of a sufficient replication in this behalf, the said def'ts pray judgment whether the said pl'ff his action aforesaid against them ought to have and maintain. And for causes of demurrer in this behalf the def'ts allege and set down the following, to wit:

1. That the pl'ff in his said replication has neither confessed and avoided the matter and gist of said plea, nor traversed the same.

2. That it is left altogether uncertain, in said replication, whether the matter therein pleaded be therein alleged and pleaded as new matter in avoidance of said plea, or by way of traverse of the same.

3. That no new matter in avoidance of said plea is alleged and pleaded in said replication, and yet the same concludes with a verification, instead of concluding to the country.

4. That said replication as being a traverse of the matter, and of the gist of the matter pleaded by def'ts in their said plea, ought to have concluded to the country, and not with a verification.

5. That the said replication does not traverse any material matter of the said plea, nor sufficiently answer the same by new matter in avoidance.

6. That said replication pleads, and requires def'ts to tender an issue on matter immaterial to, and a departure from the gist of the matter pleaded by def'ts in their said plea, and also immaterial to, and a departure from any matter put in issue by pl'ff in his said declaration, in this, to wit, that said replication in effect pleads and requires the def'ts to tender an issue on the averment, that the particular misrepresentation pleaded by def'ts in their said plea had not the specific practical effect of causing the said premises to be charged at a lower premium than would otherwise be demanded.

7. That said replication is altogether erroneous, immaterial, and insufficient in law, and wants form, &c.

Demurrer to Replication to sixth Plea.

And the said defendants further say they ought not to be charged by reason of any thing by the said plaintiff, in his said replication to def'ts' said sixth plea, above alleged and pleaded, because they say that the said replication, and the matter therein contained, are not sufficient in law to enable the said plff. to have and maintain his action aforesaid against them; and that they are not bound by the law of the land to answer the same; and this they are ready to verify, &c.: wherefore, for want of a sufficient replication in this behalf, the said defts. pray judgment whether the said plff. his action aforesaid against them ought to have and maintain. And for causes of demurrer in this behalf, the defts. allege and set down the following, to wit:

1. That plff., in his said replication, has neither confessed and avoided the matter and gist of said plea, nor traversed the same.

2. That it is left altogether uncertain, in said replication, whether the matter therein pleaded be therein alleged and pleaded as new matter in avoidance of said plea, or by way of traverse of the same.

3. That no new matter in avoidance of said plea is alleged and pleaded in said replication, and yet the same concludes with a verification instead of concluding to the country.

4. That said replication, as being a traverse of the matter and of the gist of the matter pleaded by defts. in their said plea, ought to have concluded to the country, and not with a verification.

5. That the said replication does not traverse any material matter of the said plea, nor sufficiently answer the same by new matter in avoidance.

6. That said replication pleads, and requires defts. to tender an issue on matter immaterial to, and a departure from the gist of the matter pleaded by defts. in their said plea, and also immaterial to, and a departure from any matter put in issue by plff. in his said declaration, in this, to wit, that the said replication, in effect, pleads and requires defts. to tender an issue on

the averment that the loss and destruction of the premises in the declaration mentioned happened without any fraud or design on the part of the said plff. and said Poindexter.

7. That the said replication is altogether immaterial, erroneous, and insufficient in law, and wants form, &c.

Joinder in demurrers to Rep's to fourth, fifth, and sixth Pleas.

In which demurrers to the plff's replications to the def'ts' fourth, fifth, and sixth pleas, the plff. joins.

Plff's dem'r sustained, and Def'ts demurrers overruled.

And afterwards, to wit, at a court continued and held for the county aforesaid the 16th day of November, 1833, came the parties aforesaid, by their attorneys; and thereupon the court, having heard the arguments of counsel and considered the matters of law arising out of the said several demurrers, do overrule the defendants' demurrer to the plaintiff's declaration, and sustain the plaintiff's demurrer to the defendants' second plea, and do overrule the defendants' demurrers to the plaintiff's replications to the defendants' fourth, fifth, and sixth pleas.

Jury sworn—Juror withdrawn, and cause continued.

And afterwards, to wit, at a court continued and held for the county aforesaid the 13th day of May, 1834, came the parties aforesaid, by their attorneys; and thereupon came a jury, to wit, John Adam, James W. Scott, Joseph Nevitt, George Hill, Alexander Waugh, Samuel Wheeler, Thomas E. Baird, Robert Washington, Joseph Eaches, Matthias Snyder, jr., Benoni Wheat, and Charles Pascoe; who were sworn and affirmed well and truly to try the issues joined as aforesaid; and, with consent of the parties and the assent of the court, a juror is withdrawn, and the cause continued.

Jury sworn, and continued till to-morrow.

And afterwards, to wit, at a court continued and held for the county aforesaid the 15th day of October, 1834, came the parties, by their attorneys; and thereupon came a jury, to wit, John Harper, David H. Davis, Thomas Jacobs, Washington T. Harper, Horatio Clagett, William Stabler, Robert Hall, John Moffitt, John Adam, Thomas E. Baird, Alexander Waugh, and Benoni Wheat; who were sworn and affirmed well and truly to try the issues joined as aforesaid; and, with the consent of parties and the assent of the court, they are continued until to-morrow.

Jury continued till to-morrow.

And afterwards, to wit, at a court continued and held for the county aforesaid the 16th day of October, 1834, came the parties aforesaid by their attorneys; and the jury sworn as aforesaid appeared in court pursuant to their adjournment; and, with the consent of parties and the assent of the court, are again continued till to-morrow.

Verdict for Plaintiff, and Judgment.

And now here, at this day, to wit, at a court continued and held for said county the said 17th day of October, 1834, came the parties aforesaid by their attorneys; and the jury sworn as aforesaid appeared in court pursuant to their adjournment, and returned the following verdict: "We of the jury

find for the plaintiff, and assess his damages to seven thousand dollars, being the principal sum due, to carry interest from the thirteenth day of April, 1829, till paid." Therefore it is considered by the court that the said plaintiff recover of the said defendants the aforesaid sum of seven thousand dollars, damages aforesaid, by the jurors aforesaid assessed, with interest thereon, as aforesaid, and also his costs by him about his suit in this behalf expended. And the said defendants in mercy, &c.

Plaintiff's costs, $48 91.

Whereupon the defendants tendered two bills of exceptions, which were signed, sealed, and ordered to be enrolled, and are as follows:

First Bill of Exceptions.

On the trial of this cause, the plaintiff, to support the issues on his part above joined, produced and read in evidence to the jury the original question or offer of insurance on the part of the plaintiff and the deceased Thomas Poindexter, by Ladd & Co., their agents, to the def'ts, with the answer of the defts. thereto, hereto annexed (see page 36), and the policy of insurance executed thereupon by the defts. with the conditions or fundamental rules endorsed thereon and mentioned in the declaration; *prout* the same above set out on oyer in the course of former proceedings in this cause. (See pp. 7 and 11.)

And the pltff. then further produced and read in evidence to the jury, in order to prove the loss and destruction of said mill by fire, the depositions of Edmund Banks, John Robinson, George Payne, and George Banks; prout the same annexed, marked A, B, C, D.

And the plaintiff then, in order to prove the title and interest of himself and said Poindexter in the property described and insured as aforesaid, further produced and read in evidence to the jury the several deeds and papers marked and numbered 9, 10, 11, 12, 13, 14, 15, and 16; *prout* the same hereto annexed; (see from p. 47 to p. 65 inclusive;) and also the deposition of John Ledwidge; *prout* the same hereto annexed, marked E. And then produced and offered to examine as a witness on his behalf the said Joseph Howard, the same person mentioned by that name in the foregoing deeds and papers; and the competency of said Howard being objected to on the part of defts., the plff., in order to establish his competency, produced and read in evidence a trust deed from said Joseph Howard and the plff. to one William J. Roberts, dated 13th May, 1814; *prout* the same annexed, marked F; a release from sundry of the endorsers named in said deed to the said Joseph Howard, dated 17th April, 1826; *prout* the same annexed, marked G; the last will and testament of John Mundell, in the said deed named; also, the last will and testament of Daniel Grennan, the executor of said Mundell; and a release from John S. Wellford, the executor of said Grennan, to said Joseph Howard; *prout* the same, all being hereto annexed, marked H, J, K; also, the several certificates of William J. Roberts, cashier of the Office of the Bank of Virginia at Fredericksburg, and of Hugh M. Patton, cashier of the Farmers' Branch Bank at Fredericksburg; prout the same annexed, marked L, M, N; and proved that the aggregate amount paid by the endorsers, and referred to in said certificates, was between 5000 and 6000 dollars. Whereupon the court decided that the said Howard was a competent witness, and he was accordingly sworn and examined as a witness on the behalf of plaintiff, to which defts. except.

And the said witness, upon such his examination, testified that he considered the plff. had complied with the terms and conditions of the said memorandum of agreement, dated 22d July, 1818 (No. 15, p. 63); that he the witness was satisfied and ready to convey the moiety of said island and mill, &c. to plff.; that, prior to the said insurance, the plff. had obtained releases of debts due from Howard & Lawrence to the amount of more than $21,000, for which plff. had produced and given accounts and vouchers with which he was satisfied, and some of which he destroyed when removing from Ohio to Maryland, and the residue remain among his papers in Maryland; and that the witness, upon being so satisfied of releases to that amount before the date of the policy, would have executed a conveyance to said Lawrence, pursuant to said agreement, if he had been requested to do so, but never was so requested; that the bank debt, covered by the said deed of trust and released by the said endorsers as aforesaid, was also a part of the said debts of Howard & Lawrence, included in the sum of $30,000 mentioned in said memorandum of agreement; that the said debts of Howard & Lawrence, included in the said $30,000, also consisted of sundry judgments, to the amount of about 6000 or 7000 dollars, recovered against said Howard and Lawrence by William and George Winchester, ex'ors of William Winchester, dec'd, in the circuit court of the United States for the district of Virginia, which judgments had been enjoined in said court in the year 1817, and ever since stand enjoined; that the witness requested his father to inquire of the said Winchesters what they intended to do, and was informed by his father they said they meant to do nothing more in the business. And the plff. hereupon produced the record of the proceedings in the said injunction case; *prout* the same hereto annexed; (see p. 104;) also, the record of the proceedings in the same court between said Winchester's ex'ors, complts., and said Howard & Lawrence, defts., referred to in the said injunction case; *prout* the same annexed, (see p. 76.)

Which being all the evidence produced by plff. of the title or interest of himself and late co-plff. in the insured premises, the defts. (excepting to the competency and admissibility of so much of the evidence of said Howard as went to prove releases of debts to the amount of $21,000 and upwards, for which the witness admitted he had written vouchers furnished by the plff. and not produced,) prayed the court to instruct the jury that the evidence so produced on the part of the plff. did not import, and was insufficient to prove any such title or interest in said Lawrence & Poindexter in the insured premises, or any such ownership in them of the said premises, as was necessary to fulfil the representation and description of their interest in the said premises, contained in the said offer or question of insurance and in the said policy; and that, for want of due and sufficient evidence of such title, interest, or ownership, the verdict of the jury ought to be for defts.; which instruction the court refused; to which refusal defts. except.

And thereupon the defts. further prayed the court to instruct the jury, that the interest shown by the evidence to have been in said Lawrence and Poindexter in the insured premises, at the date of said insurance, was not such an interest or title as was imported by the representation and description of the property in the said offer of insurance and in the said policy contained; which instruction the court also refused; and to such refusal the defts. also except. And this their bill of exceptions is sealed, &c. this 16th day of October, 1834.

W. CRANCH. [SEAL.]
JAMES S. MORSELL. [SEAL.]

Second Bill of Exceptions.

And thereupon the plff., in the further progress of the trial, produced and read in evidence to the jury, in (addition to the evidence in the foregoing bill of exceptions stated,) the record of the proceedings and evidence in the former suit between the present plaintiff and defendants, upon the same policy of insurance, tried in this court and removed to the Supreme Court, with the decision and mandate of the Supreme Court thereupon, and the subsequent proceedings in this court; prout the same annexed; (see from p. 29 to 183 inclusive;) and it is agreed that the proceedings, documents, and evidence contained and stated in the said record shall be considered as in evidence on this trial. In addition to which evidence, plff. now here produced and read in evidence to the jury on this trial the certificate of Robert H. Hooe, a magistrate in the county of Stafford, in the State of Virginia; *prout* the same annexed, marked O; which certificate was given on the 11th day of February, 1829, and not before, and was delivered by plff's. agent to defts., at their office in Alexandria, on the 14th of the same month, and not before. And plff. then proved that Murray Forbes, the magistrate who signed the certificate contained in the said record and given in evidence on the trial of the said former suit, was appointed postmaster at Falmouth, in the said county of Stafford, on the 10th October, 1825, and has ever since continued to be such postmaster. And it appeared, from the inspection of the original writ and the proceedings in this suit, that this suit was not commenced till the 27th December, 1830; and it further appeared, and was admitted that the loss of the said mill by fire, for which loss this action was brought, happened on the 14th of February, 1824; that immediately after such loss, and in the said year 1824, the plff. and said Poindexter exhibited such notice, claim, and proofs and certificate of such loss as are stated, and at the dates stated in the said record of such former suit; and that for such loss and upon such notice and proof then produced and offered as in compliance with the said 9th article of the said fundamental rules, the said former suit was commenced on the day of , 1824, and prosecuted and terminated as by the said record thereof appears.

Whereupon the defts. prayed the court's instruction to the jury, upon the evidence aforesaid, that the act of assembly, in force in this county, commonly called the statute of limitations, is a bar to the plff's. recovery in this suit, upon the issue joined on the said third plea of the defts.; and that such issue, upon the evidence aforesaid, ought to be found for the defts.; which instruction the court refused, &c.

Whereupon the defts., upon the whole evidence aforesaid, as well what is stated in the preceding bill of exceptions as what is herein above stated, prayed the court to instruct the jury as follows, to wit, that the notice and preliminary proofs of loss, with the certificates of said Murray Forbes and Robert H. Hooe, produced by the plff. and laid before the defts. as in compliance, on plff's. part, with the 9th of the said fundamental rules or conditions, as shown in the said record of the former suit, and in the said certificate of Robert H. Hooe, produced on this trial as aforesaid, are not a due and sufficient compliance with the said 9th rule or condition, to entitle the plff. to recover in this action; which instruction the court also refused.

Whereupon the defendants further prayed the court to instruct the jury as follows, to wit, that in order to entitle the plaintiff to recover in this action, it was necessary for the plaintiff, in compliance with the said condi-

tion or article, to have procured such a certificate under the hand of a magistrate or sworn notary as is required by the said ninth rule or condition in due and reasonable time after the happening of the said loss, or after notice and claim for the same upon the defendants; and that such a certificate as that of the said Robert H. Hooe, procured so long after the loss, and the former notice and preliminary proofs, upon which the plff. had claimed and sued for said loss in the year 1824 as aforesaid, as the 11th February, 1829, was not in due and reasonable time, and cannot be taken as such a compliance with the said 9th rule or condition as to entitle plff. to recover in this action; which instruction the court also refused.

Whereupon the defts. further prayed the court to instruct the jury as follows, to wit, that it was incumbent on the insured in this case, at or before the time of the execution of the said policy, to have disclosed to the defts. the true nature and extent of the title and interest of the said Lawrence and Poindexter in the insured premises, as now disclosed by the documents of title given in evidence in this case; and if the said insurance was effected without any disclosure of the title or interest of the insured other than what is imported by the said offer and policy, then there was a concealment of circumstances materially affecting the risk, which avoids the policy; which instruction the court also refused.

Whereupon the defts. further prayed the court to instruct the jury as follows, to wit, if the jury find from the evidence that a full disclosure of the actual title of the insured in the premises, as it existed at the time, was material to, and would have considerably increased the estimate and value of the risk and premium, and that no other disclosure of the same was made than as aforesaid, then there was a material concealment, which avoids the policy; and the court being divided in opinion on this last instruction, the same was also refused.

Whereupon the defts. further prayed the court to instruct the jury as follows, to wit, if the jury find from the evidence that the construction of the building insured by the said policy was grossly misrepresented in said offer and policy, and that, instead of being a building with walls of stone, and with a covering or roof only of wood, the walls themselves were partly of wood, and that such actual construction of the building greatly increased the risk beyond what the insurers would have incurred if the building had truly answered its description in the said offer and policy, then the jury ought to presume that the said building was charged in said policy at a lower premium than would otherwise have been demanded by the defts., so as to bring the case within the operation of the last clause of the first of the said fundamental rules; which instruction the court also refused.

To all which several opinions and decisions of the court, so refusing the several instructions to the jury moved on the part and behalf of the defts. as aforesaid, the defts. except; and this their bill of exceptions is sealed, &c. this 17th day of October, 1834.

W. CRANCH. [SEAL.]
JAMES S. MORSELL. [SEAL.]

A.

Deposition of Edm. Banks.

The deposition of Edward Banks, of lawful age, taken at the house of Gerard Banks, jun., at Potts' Creek Valley, in the county of Alleghany,

and State of Virginia, to be read as evidence in a suit now depending and undetermined in the United States circuit court for the District of Columbia, for the county of Alexandria, between Joseph W. Lawrence, survivor, &c., plaintiff, and the Columbian Insurance Company, of Alexandria, defendants.

Question 1st, by pltf. How long had you been acquainted with the mills on Lawrence's Island, near Fredericksburg, called the Elba Mills, before they were burnt?

Answer. I do not now recollect the precise time, but some four or five years.

Question 2nd, by same. In whose possession were they, and whose property were they considered to be, when you were first acquainted with them?

Answer. They were, as I understood, the property of Joseph Howard and Joseph W. Lawrence, and were possessed by them.

Question 3rd. Whose property were they, and in whose possession were they when they were burnt on the 14th day of February, 1824?

Answer. By some contract or contracts amongst the parties, Thomas Poindexter had come into possession, as I believe, and was the owner of Howards interest, or an interest equal to Howards', and the firm then was Lawrence and Poindexter; and under that firm they transacted business for about fifteen or eighteen months, and until the mills were burnt, soon after which Poindexter moved away.

Question 4th, by same. Were Mr. and Mrs. Smith, the miller and his wife, great smokers, and were they in the habit of frequenting the mills for the purpose of getting food for their hogs, &c.?

Answer. Mr. and Mrs. Smith were the two most inveterate smokers I ever knew. They went nowhere without their pipes, and, as I believe, Mrs. Smith was in the regular habit of going into the mill for the purpose of getting food for hogs and poultry, and I feel confident from my recollection of her smoking habits, that if she went as far that day as from the house in which they resided to the mill, she did not go without having previously lighted her pipe.

EDMUND BANKS.

VIRGINIA, *Alleghany county, to wit:*

The above deposition of Edmund Banks was subscribed and sworn before me in the place mentioned in the caption thereof, on the 27th day of July, 1832. Given under my hand as a justice of the peace for the said county, the date above. JOHN ARITH, *J. P.*

To the Columbian Insurance Company of Alexandria: Please take notice, that on the 27th day of the present month, at the house of Mr. Gerard Banks, junior, postmaster at Potts Creek Valley, in the county of Alleghany, and State of Virginia, I shall proceed to take the deposition of Mr. Edward Banks, to be read as evidence in a suit depending in the United States circuit court for the District of Columbia and for the county of Alexandria, in which I am plaintiff and you are defendants

JOSEPH W. LAWRENCE, Survivor, &c.

Fredericksburg July 2, 1832.
Acknowledged.

W. H. MILLER, *President.*

Alexandria, July 5, 1832.

B.

Deposition of J. Robinson.

In the suit of Joseph W. Lawrence, survivor, &c. and the Columbian Insurance Company of Alexandria, respecting the mill in question. I, Jno. Robinson, have been acquainted and known them for upwards of twenty years; they were first possessed by Rich'd and Stephen Winchester, and since I have known them have been several times rebuilt. I am a house-joiner and carpenter, and did the work to them the last time they were rebuilt for Howard and Lawrence; and I verily believe they must have cost twenty thousand dollars. And I am of opinion that they were worth the above sum at the time they were burnt; and I do consider the description given of them, built of stone and covered with wood, proper and sufficient; and as to the gable-ends being upright or sloping, it certainly is a part of the roof. It cannot be completed without it. And further this deponent sayeth not. JNO. ROBINSON.

STATE OF VIRGINIA, *Ohio county, to wit:*

At Wheeling, in said county of Ohio, on this 22nd day of March, 1832, before me, one of the justices of the peace for Ohio county, came personally the above named Jno. Robinson, and the same who subscribed his name to the above deposition, and after being carefully examined, and cautioned and sworn to testify the whole truth, did subscribe to the foregoing and annexed deposition or testimony, after the same was reduced to writing by the deponent, in my presence. And I certify that said deponent now lives or resides at a greater distance from the place of trial of said case than one hundred miles. That I am not of counsel or attorney of the parties, nor interested in the event of the cause. The foregoing deposition is taken at the request of Joseph *M.* Lawrence, survivor, and to be used in an action or suit at law now pending in the United States circuit court for the District of Columbia, for the county of Alexandria, in which action said Jos. *M.* Lawrence, surv'r, &c. is plaintiff, and the Col. Insurance Company of Alexandria are defendants. The defendants not residing or being, nor having any attorney, to my knoweldge, residing or being within one hundred miles of the place of taking this deposition, was not, to my knowledge, notified thereof. Witness my hand this 22d of March, 1832, and done at Samuel Denniston's, in Wheeling aforesaid.

GEO. DULTY, *J. P.*

C.

Deposition of G. Payne.

The deposition of George Payne, taken at the tavern of William Bowen and Co., in the town of Fredericksburg, in the State of Virginia, on the seventh day of May, 1832, to be read as evidence in a suit depending in the United States circuit court for the District of Columbia, for the county of Alexandria, between Joseph W. Lawrence, survivor, &c. *vs.* the Columbian Insurance Company of Alexandria.

The said George Payne being duly sworn, deposes and says, that the mill of Lawrence and Poindexter, called the Elba mill, was burnt on Saturday the fourteenth day of February, 1824, in the night. On the morning of that day the mill chimney had been accidentally on fire. The chimney was on fire before Mr. Smith left the mill on that day, which was abou

eleven or twelve o'clock. I remained in the mill, measuring stuff, until nearly night, when I locked up the mill and carried the key to Mr Smith, but returned again, and remained until dusk. I had, upon leaving the mill that night, carefully extinguished the fire in the mill hearth by pouring water upon it. When the mill was burnt there was a considerable quantity of bran and shorts, ship-stuff, and old flour, and between four and five hundred empty flour barrels, as I believe, therein. There was a corn house with a good deal of corn so near the mill that the house would be endangered by such a fire as would burn down the mill.

Question 1. How long had you lived at the mill? How long before the fire had you used the mill? And did you calculate on manufacturing more flour that season?

Answer. I had lived in the mill during the partnership of Lawrence and Poindexter. We had not worked her from the Tuesday before the fire. From what Lawrence and Poindexter had told us, we did calculate on grinding more wheat that season, though at the time of the fire there was no wheat in the mill. We had received orders to put a pair of stones in order for grinding wheat, and at the time of the fire we were engaged in dressing a pair accordingly.

Question 2. Was the establishment profitable or unprofitable to the owners? Had not the neighboring mills greatly the advantage? And could they not make money when your mill would make nothing?

Answer. I know nothing as to the profits. The mill was about a mile from Fredericksburg; and of course the carriage would make a small difference between that and the neighboring mills.

Question 3. Did you know that the mill was insured?

Answer. I knew nothing about it—had heard that it was.

Question 4. How many stories was the mill? Were not the gables of wood? And were there not two stories of wood above the square? And for what purposes were they used?

Answer. The house was four stories, of stone, with a wooden roof, with only one floor therein above the one at the top of the square (where the foot of the rafters rested) which formed the story in the roof, where the hopper-boy worked. The gables were of wood, that is, from the foot of the rafters, and the house covered with wood. The superfine bolts worked upon the floor at the top of the stone work.

Question 5. Do you suppose that the fire which burnt the mill could have been produced by the fire from the chimney? What time did it commence raining on the Saturday, the 14th February?

Answer. I do not think the fire could have originated from the chimney, from what I heard of the place where it broke out. It commenced raining early in the evening, and as the evening advanced it increased, and about 8 or 9 o'clock at night, when I left Mr. Smith, it rained quite briskly.

Question 6. Do you believe the mill was intentionally set on fire? Were not the lower windows of the mill nailed up?

Answer. It is my opinion she was set on fire, but by whom I have no idea. The lower windows were nailed up.

Question 7. Were Mr. Smith, the miller, his wife, and a hired girl in the habit of smoking?

Answer. Mr. Smith was a great slave to his pipe. Mrs. Smith and the hired woman, also, were in the habit of smoking, and have frequently seen

all of them smoking in the mill when coming in for hog, cow food, &c., which was a daily practice with some of the party.

his
GEORGE x PAYNE.
mark.

D.

Deposition of Geo. Banks.

The deposition of George Banks, taken at the above mentioned time and place, to be read as evidence in the same case.

Question 1. Were you well acquainted with the mill called Elba Mill in the years 1822 and 1823? If so, state what you considered the value of the mill at that time.

Answer. I was well acquainted with the Elba Mill from its erection to its destruction by fire. I thought it a very valuable mill, worth, when it was burned, at least $20,000.

Question 2. Were you well acquainted with Mr. Smith, the miller at that mill? and was he in the habit of smoking much?

Answer. I have known Smith for many years, and frequently remarked that he was much devoted to his pipe, and scarcely ever saw him in the mill without his pipe; and have, moreover, seen him in the mill sweeping the floor with a pipe in his mouth, when combustible matter, such as hay, &c. from wagons, was upon the flooring.

GEO. BANKS.

E.

Deposition of J. Ledwidge.

The deposition of John Ledwidge, taken at the above mentioned time and place, to be read as evidence in the same case.

The said John Ledwidge deposes, that he witnessed an agreement in writing, which was executed by Joseph Howard and Joseph W. Lawrence, in his presence, for the purchase by the said Lawrence, from the said Howard, of the island and mills thereon, which agreement in writing was exhibited on the trial of a suit between the said Lawrence, &c. and the Columbian Insurance Company of Alexandria, in the circuit court for the county of Alexandria; and the execution thereof by the said parties was then proved by this deponent, who was a subscribing witness to the same. That he was well acquainted with the debts of said Howard and Lawrence at the time of said agreement, having acted as their clerk. That, from that period to the time he delivered said agreement to John Scott, he, from his own knowledge, knew those debts had been greatly lessened by payments by the said Lawrence, but to what amount he cannot say: That, being about to leave Fredericksburg, he delivered the said agreement to John Scott. That he had never been called on for it by Howard and Lawrence, or by Poindexter. That he lived as a clerk with Howard and Lawrence at the time the mill was last rebuilt. That the cost thereof amounted to upwards of $22,000. That the preceding mills at that place had been burned while Howard and Lawrence possessed them, and were not insured. That he left Fredericksburg in June, 1824, and just previous to that time delivered the agreement aforesaid to John Scott.

JNO. LEDWIDGE.

CORPORATION FREDERICKBURG, *to wit:*

The foregoing depositions of George Payne, George Banks, and John Ledwidge were taken, and the said deponents duly sworn on the day and at the place before mentioned, (in pursuance of a commission and notice herewith returned,) before me, a justice of the peace for the corporation aforesaid. Given under my hand and seal this 7th day of May, 1832.

JOHN HART, *J. P.* [SEAL.]

F.

Trust Deed—Howard & Lawrence, &c. to William J. Roberts.

This indenture, made this 13th day of May, in the year of our Lord one thousand eight hundred and fourteen, between Joseph Howard and Mary his wife, and Joseph W. Lawrence, of the county of Stafford and State of Virginia, (the said Joseph Howard and Joseph W. Lawrence being partners, and trading under the firm of Howard and Lawrence,) of the first part; Robert Patton, John Mundell, John Scott, Charles Austin, Thomas Goodwin, Robert Mackay, William S. Stone, John Crump, Anthony Buck, all of the corporation of Fredericksburg and State aforesaid, and Yeamans Smith, of the county of Spotsylvania and State aforesaid, of the second part; and William J. Robers, of the corporation of Fredericksburg and State aforesaid, of the third part. Whereas the said parties of the second part have this day endorsed the note of the said parties of the first part for the sum of two thousand dollars, for the accommodation of the said parties of the first part, negotiable at the Office of Discount and Deposite of the bank of Virginia at Fredericksburg; and also contemplate endorsing, from time to time, other similar notes, for the purpose of continuing such accommodation for and during the pleasure of the said parties of the second part; and also contemplate, from time to time, to endorse other notes of the parties of the first part, negotiable at the said Office of Discount and Deposite, for the further accommodation of the said parties of the first part, during the pleasure of the said parties of the second part; and the said parties of the first part are willing and anxious not only to indemnify and save harmless the said parties of the second part from and against all damages and inconveniences which they may sustain by reason of their now having endorsed or hereafter endorsing such negotiable notes, but also to provide for the payment of such notes so endorsed, or which may hereafter be endorsed, so as that the said parties of the second part shall at no time be subject to the inconvenience of paying any such note now endorsed, or which may hereafter be endorsed by them. Now this indenture witnesseth, that the said Joseph Howard and Mary his wife, and Joseph W. Lawrence, for and in consideration of the premises, and for the purposes aforesaid, and for the further consideration of one dollar to them in hand paid by the said William J. Roberts at or before the sealing and delivery of these presents, the receipt whereof they do hereby acknowledge, have given, granted, bargained, and sold, and by these presents do give, grant, bargain, and sell unto the said William J. Roberts all that island and mill and mill seat thereon, situate, lying, and being in the county of Stafford, in the Great Falls of Rappahannock river, commonly called and known by the name of Vicar's Island or Mortimer's Island, together with all ways, waters, watercourses, easements, privileges, commodities, and appurtenances whatsoever to the said island, mill, and mill seat belonging, or in

anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof: To have and to hold the said island and mill and mill seat unto the said William J. Roberts, and his heirs and assigns, for ever; in trust, nevertheless, and upon this express condition, that if the said parties of the first part shall now and at all times hereafter well and truly pay and satisfy the said note of two thousand dollars, endorsed by the said parties of the second part, and all other notes of the said parties of first part, which the said parties of the second part, or the survivors of them, may hereafter endorse for the accommodation of the said parties of the first part, negotiable at the Office of Discount and Deposite of the bank of Virginia, or Farmers' Bank of Virginia, at Fredericksburg, when such note or notes shall respectively become due and payable, that then and in that case these presents, and every clause, matter, and thing herein contained shall cease, determine, and be void absolutely, as if the same had never been made, anything herein to the contrary or serving to the contrary notwithstanding. But in case the said parties of the first part shall at any time fail to pay and satisfy either their said note of two thousand dollars, endorsed by the said parties of the second part for the accommodation of the said parties of the first part, at the said Office of Discount and Deposite of the bank of Virginia, or any other note of the said parties of the first part which may be hereafter endorsed by the said parties of the second part, or the survivors of them, for the purpose of continuing such accommodation, or any other note or notes of the said parties of the first part which may be endorsed hereafter by the said parties of the second part, or the survivors of them, for the further accommodation of the said parties of the first part, at the said Offices of Discount and Deposite of the said banks, when such note or notes shall respectively become due and payable; that then and in that case the said William J. Roberts shall forthwith sell the said premises hereby conveyed to him, and their appurtenances, to the highest bidder for cash, (having first advertised the time and place of such sale for four weeks successively in some newspaper printed in the town of Fredericksburg,) and shall convey the same to the purchaser or purchasers thereof, and out of the proceeds thereof shall first pay and satisfy the costs and charges attending the execution of this trust; and then all such note or notes of the said parties of the first part, endorsed by the said parties of the second part, or the survivors of them, for the accommodation of the said parties of the first part, at the said Offices of Discount and Deposite of the said banks, and the residue, if any, shall pay over to the said parties of the first part.

In testimony whereof, the parties to these presents have hereunto set their hands and affixed their seals, the day and year first above mentioned.

JOSEPH HOWARD. [SEAL.]
MARY HOWARD. [SEAL.]
JOSEPH W. LAWRENCE. [SEAL.]
WM. J. ROBERTS. [SEAL.]

Signed, sealed, and delivered in the presence of

Commonwealth of Virginia to Zach. Vowles, Thos. W. Cowne, and Alex. Fitzhugh, gentlemen, greeting:

Whereas Joseph Howard and Mary his wife, and Joseph W. Lawrence, by their certain indenture of bargain and sale and trust, bearing date the 13th day of May, 1814, have sold and conveyed unto Wm. J. Roberts the

island on the Falls of Rapp'k river, and county of Stafford, *of Stafford*, commonly called Vicars's or Mortimer's Island, and the mill and mill seat, &c. thereon; and whereas the said Mary cannot conveniently travel to our county court of Stafford, to make acknowledgment of the said conveyance; therefore, we do give unto you, or any two or more of you, power to receive the acknowledgment which she the said Mary shall be willing to make before you of the conveyance aforesaid, contained in the said indenture, which is hereunto annexed; and we do, therefore, command you that you do personally go to the said Mary, show and explain to her the said indenture, and receive her acknowledgment of the same, and examine her privately and apart from the said Joseph Howard her husband, whether she doth the same freely and voluntarily, without his persu sion or threats, and whether she be willing that the same should be recorded in our said county court of Stafford aforesaid; and when you have received her acknowledgment, examined her as aforesaid, that you distinctly and openly certify us thereof to our said county court, under your seals, sending then there the said indenture and this writ. Witness, Valentine Peyton. clerk of our said county court, the 14th day of May, 1814, and in the 38th year of the commonwealth.

V. PEYTON.

STAFFORD COUNTY, *to wit:*

In pursuance of the within commission, to us directed, we have this day explained to the said Mary the annexed indenture, examined her separate and apart from her sd. husband, and recd. her acknowledgment that she executed the same freely and voluntarily, without his persuasion or threats, and that she is willing the same be recorded in the county court of Stafford. Given under our hands and seals the 17th June, 1814.

ZACH. VOWLES. [SEAL.]
THOS. W. COWNE. [SEAL.]

STAFFORD COUNTY, *to wit:*

We, Zach. Vowles and Thos. W. Cowne, magistrates of the said county, do hereby certify, that Joseph Howard and Joseph W. Lawrence, parties to the within conveyance, have duly acknowledged the same before us on the 23d day of June, in the year 1814, and desired us to certify the said acknowledgment to the cl'k of the county court of Stafford, in order that the same may be recorded. As witness our hands and seals.

ZACH. VOWLES. [SEAL.]
THOS. W. COWNE. [SEAL.]

Stafford County Court, Clerk's Office, May the 14th, 1821. An indenture of trust from Joseph Howard and others, of the one part, to Wm. J. Roberts, for the benefit of Robert Patton and others, of the other part, with the certificates of acknowledgment of the parties thereto endorsed, was *was* recd. in the cl'k's office, and admitted to record.

Teste: J. M. CONWAY.

G.

Release to J. Howard from several of his Endorsers.

We, whose names are underwritten, for value received of Joseph Howard, do by these presents release to said Howard all our claims to

recourse against him for the moneys already paid by us or either of us, or that we or either of us may be required to pay, as endorsers of two negotiable notes made by the late firm of Howard and Lawrence, one of which, payable at the Farmers' Bank of Virginia, at Fred'g, was, when first endorsed by us, for the sum of $4,800, and the other of which, payable at the Virginia Bank, at Fred'g, was, when first endorsed by us, for the sum of $5,000, both of which notes have been curtailed from time to time, so as to leave a balance due upon the two, at this date. of $5,987. Given under our hands and seals this the 17th day of April, 1826.

YEAMANS SMITH. [SEAL.]
ANTHONY BUCK. [SEAL.]
JOHN CRUMP. [SEAL.]
W. S. STONE. [SEAL.]
CHARLES AUSTIN. [SEAL.]
THO. GOODWIN. [SEAL.]
ROBERT MACKAY. [SEAL.]
ROB. PATTON. [SEAL.]
DANIEL GRINNAN. [SEAL.]
JOHN SCOTT. [SEAL.]

H.

D. Grinnan's Qualification as Ex'or of John Mundell.

At a court held for Spotsylvania county the 6th day of October, 1823, the last will and testament of John Mundell, deceased, was proved by the oaths of John Hart and E. P. Cady, two of the witnesses thereto, and is ordered to be recorded; and the codicil annexed was also proved by the oath of Isaac H. Williams, a witness thereto, and is ordered to be recorded; and John Scott, one of the executors therein named, came into court and renounced the executorship; and on the motion of Daniel Grinnan, the other executor named in the said will, who made oath thereto, and entered into and acknowledged a bond in the penalty of $2,000, conditioned as the law directs, certificate is granted him for obtaining a probat thereof, in due form.

Teste: R. L. STEVENSON, *C. C.*

STATE OF VIRGINIA, *Spotsylvania County, to wit:*

I, Richard L. Stevenson, clerk of the court of Spotsylvania county, in the State aforesaid, do certify that the foregoing is a true copy from the records of the said court.

In testimony whereof, I have hereunto set my hand and affixed the seal of my office, this 11th day of October, one thousand eight hundred and thirty-four.

[SEAL.] R. L. STEVENSON, *C. C.*

STATE OF VIRGINIA, *Spotsylvania County, to wit:*

I, George Hamilton, presiding justice of the court of Spotsylvania county, in the State of Virginia, do hereby certify that the attestation hereto annexed, made by Richard L. Stevenson, clerk of the said court, is in due form, and by the proper officer. Given under my hand and seal, at the county of Spotsylvania, this 11th day of October, one thousand eight hundred and thirty-four.

GEORGE HAMILTON, *P. J.* [SEAL.]

J.

J. S. Wellford's Qualification as Ex'or of D. Grinnan.

VIRGINIA:

At a court of hustings held for the town and corporation of Fredericksburg on the 9th day of July, 1830, Helen Grinnan, the executrix, and Jeremiah Morton and John Glassell, two of the executors named in the last will and testament of Daniel Grinnan, deceased, the two first having appeared personally in court and refused to take upon themselves the burthen of the execution thereof; and the said John Glassell, the last named executor, by his note in writing, addressed to the court and duly proved by the oath of a witness, having refused to take upon himself the burthen of the execution of the said last will and testament of Daniel Grinnan, deceased; on the motion of John S. Wellford, the other executor therein named, who made oath thereto, and no security being required by the court, the testator requesting the same, entered into and acknowledged a bond in the penalty of two hundred thousand dollars, conditioned as the law directs, certificate is granted him the said John S. Willford for obtaining a probat of the said will in due form.

VIRGINIA, *Corporation of Fred'g, to wit:*

I, John James Chew, clerk of the corporation court aforesaid, do hereby certify the foregoing to be a true transcript from the records of the said court.

In testimony whereof, I have hereto set my hand and caused the seal of my office to be hereto affixed, this 11th day of October, in the year of our Lord 1834, and of our independence the fifty-ninth.

[SEAL.] J. J. CHEW, *C. C. H. F.*

VIRGINIA, *Corporation of Fred'g, to wit:*

I, Thomas Goodwin, presiding magistrate in the corporation court aforesaid, do hereby certify that John James Chew, who hath given the preceding certificate, is clerk of the said court, and that his said attestation is in due form. Given under my hand this 11th day of October, 1834.

THO. GOODWIN, *Mayor.*

K.

Release to J. Howard from Wellford, Ex'or of Mundell.

Know all men by these presents, that I, John S. Wellford, executor of Daniel Grinnan, deceased, who was executor of John Mundell, deceased, have released and acquitted, and by these presents do release and acquit Joseph Howard from all claim to recourse against him, or responsibility, for any money paid by the said John Mundell, or the said Daniel Grinnan as his executor, or by me as executor of the said Daniel Grinnan, who was executor of the said John Mundell, or that I, as executor as aforesaid, may be required to pay by reason of the endorsement by the said John Mundell, together with Yeamans Smith, Anthony Buck, John Crump, Wm. S. Stone, Charles Austin, Thomas Goodwin, Robert Mackay, Robert Patton, Daniel Grinnan, and John Scott, of two notes made by the late firm of Howard and Lawrence, one of which, payable and negotiable at the Farmers' Bank of Virginia, at Fred'bg, was, when first endorsed by the parties aforesaid, for the sum of four thousand eight hundred dollars, and

the other, payable and negotiable at the Virginia Bank, at Fred'b'g, was, when first endorsed by the parties aforesaid, for the sum of five thousand dollars; both of which notes have been curtailed from time to time, so as to leave a balance due on the two, on the 17th day of April, 1826, of five thousand nine hundred and eighty-seven dollars, and the whole amount of which two notes *have* since been paid to the said banks respectively. Given under my hand and seal this 11th day of October, 1834.

JOHN S. WELLFORD. [SEAL.]

Ex. as aforesaid.

L.

Certificate of Virginia Bank.

OFFICE BANK OF VIRGINIA,

FRED'SBURG, 10*th April*, 1832.

This is to certify, that the debt of Messrs. Howard and Lawrence to this office was paid by the endorsers of their note on the 23d December, 1826; and that this bank has no claim at present against Joseph Howard, formerly of the firm of Howard and Lawrence.

WM. J. ROBERTS, *Cas.*

M.

Certificate of Farmers' Bank.

FARMERS' BRA. BANK,

FREDERICKS'G, *April* 10, 1832.

This is to certify, that the debt of Messrs. Howard and Lawrence to this office was paid by the endorsers of their note on the 20th of December, 1826; and that this bank has no claim at present against Joseph Howard, formerly of the firm of Howard and Lawrence.

HUGH M. PATTON, *Cash.*

N.

Certificate of Virginia Bank.

OFFICE BANK OF VIRGINIA,

FRED'SBURG, 4*th Novem.* 1833.

This is to certify, that the debt due to this office by Howard and Lawrence, of the island mills, in this vicinity, was protested for nonpayment on the 15th of December, 1826, and was paid in full on the 23d of that month; and neither of the said firm, nor Howard or Lawrence, individually, are now indebted to this institution, nor has either of them been since the above mentioned period, to the best of my knowledge and belief.

WM. J. ROBERTS, *Casr.*

O.

Certificate of Rob. H. Hooe.

I, Robert H. Hooe, a magistrate duly commissioned and sworn in and for the county of Stafford, in the State of Virginia, do hereby certify that in the month of February, 1824, I was acquainted with the character and circumstances of Joseph W. Lawrence and Thomas Poindexter; that I conti-

nued acquainted with the character and circumstances of said Poindexter until the time of his removal from the State aforesaid, about the summer or fall of the year aforesaid; that I am yet acquainted with the character and circumstances of said Lawrence; and I do verily believe that they really and by misfortune, without any kind of fraud or evil entent, accidentally lost by fire their mill called the Elba Mill, situated in an island in the river Rappahannock, in the aforesaid county of Stafford, about one mile from the town of Fredericksburg, on the night of the 14th day of February, 1824; that by the said burning of the said mill they sustained a loss to the value of at least ten thousand dollars; that I was a magistrate of the county aforesaid at the time of the said fire, and have continued so since. Given under my hand this 11th day of February, 1829.

R. H. HOOE.

DISTRICT OF COLUMBIA, *Alexandria County, ss.*

I, Edmund I. Lee, clerk of the United States circuit court of the District of Columbia for the county of Alexandria, do hereby certify that the foregoing is a full and true transcript of the record of proceedings in the suit lately depending in said court, wherein Joseph W. Lawrence, survivor, &c. was plaintiff, and the Columbian Insurance Company of Alexandria were defendants.

In testimony whereof, I hereto set my hand and the seal of said court, this 5th day of November, 1834.

[SEAL.] EDM. I. LEE, *C. C.*

(1)

Exhibit A

Ent. Wm R Hogparth
Colliers Sandhouse Grid

Reed one 100 dollars
50 Thos Collins Wm Williams
Jr

Basil Jones
7300 Acres
of Oak Hickory
& Pine land

Nº 444

Colliers land

John Gibson

Basil Jones

Richard Collins land

Jones land

Thomas Collins Survey

Beech

Pine

Pine

P. Oak

Pine double

Rocky Creek

N 45 W

Pine

Red Oak

Collins Land

Fallen down Bl. Gum Begr

S 45 W 442.0

Sy. Oak

Pine

Brother Oak

N 47 30 E

Pine

Pine

P. Oak

Drowning Creek

127.36

P. Oak

Rivers

Pine

Pine

Pine

Road from Jefferson to Lawrenaville

Rocky creek

Pine

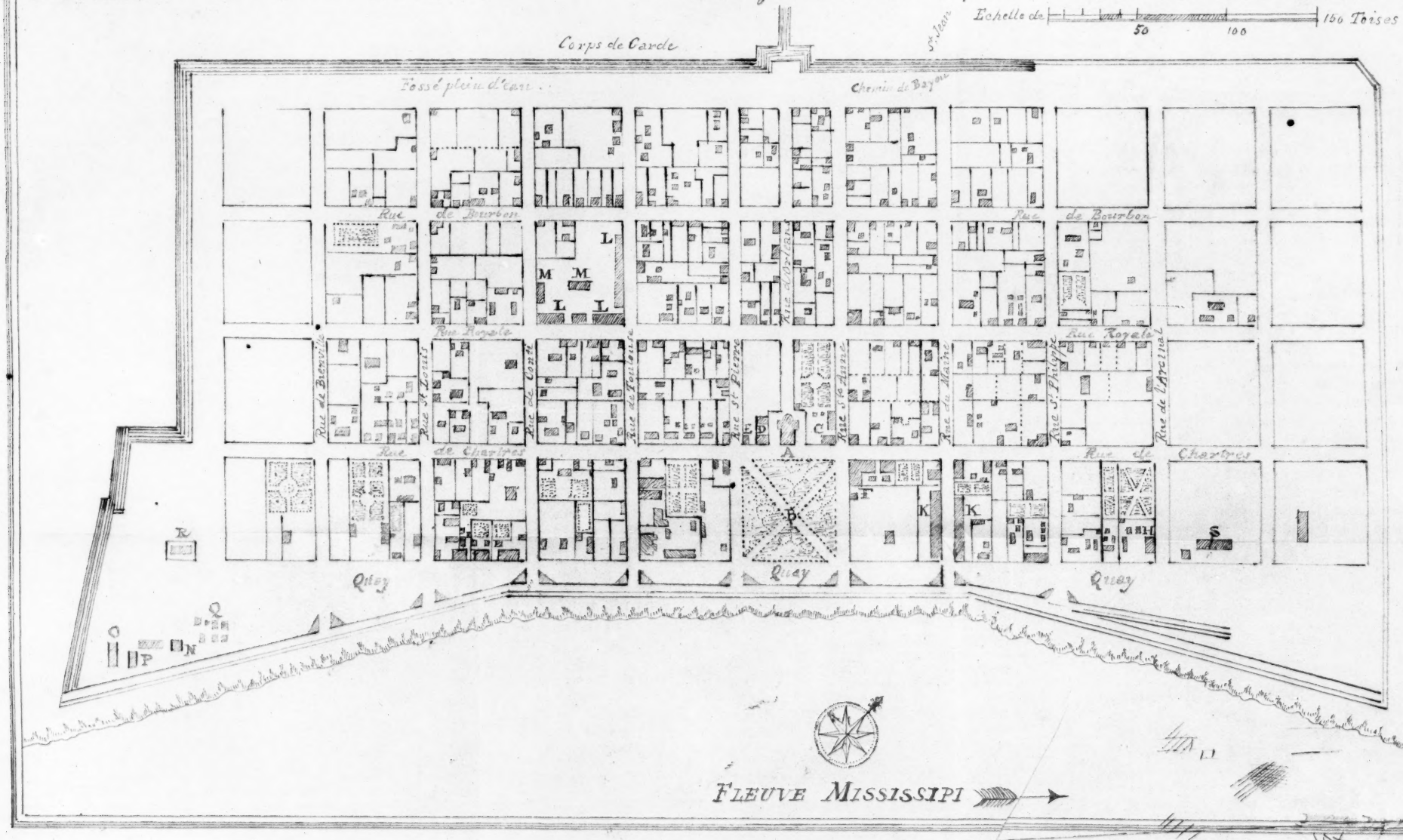
Pine

Pine

PLAN DE LA NOUVELLE ORLEANS.

A *l'Eglise Paroissiale desservie par les Capucins*
B *Place d'Armes*
C *Convent des Capucins*
D *Prisons*
E. *Corps de Garde*
F. *Gouvernement*
S. *Intendance*
H *Hopital*
I. *Ursulines*
K. *Magasins du Roi*
L. *Casernes*
M. *Forges du Roi.*
N. *Moulin à vent et a Cheval*
O. *Hangard de la Marine sous lequel on construit*
P *Corps de Garde des Bourgeois*
Q *Cabanes des Negres qui prennent soin du Moulin*
R. *Poudriere*
S *Nouv.le maison des Ursulines*

Echelle de 50 100 150 Toises



PLAN DE LA VILLE DE LA NOUVELLE ORLEANS

où est marqué la levée de terre qui la garantit de l'inondation, et l'augmentation des maisons faites depuis le 1r. Septembre 1723.

PLAN de la Nlle Orléans

tel qu'il etait en 1728

Légende.

A. Eglise.
B. Presbitère.
C. Pavillon des employés devant le Gouvernement
D. Direction.
E. Grands magasins
F. Magasins des effets de différents
G. Pavillon des officiers devant les magasins pour mettre le vivres
H. Distribution des vivres.
I. Hôpital.
K. Corps de garde.
L. Prison.
O. Parcs de la compagnie
Chemin de la marine
P. Maisons appartenant à la marine et employés à la marine
Q. Id. à la Compagnie.
Magasins à Poudre
Moulin
X. Ecurie
Y. Chantiers pour mettre debris de la compagnie et gens
hors la fonte pour l'artillerie
Z. Maisons appartenant à la compagnie
1 Ste Amelie à Mr Bienville
2 Tenaire à Mr Lemoine
3 id à la concession de Mrs L. Blanc & Castillon
4 id à Mr Bernard
5 id à Mr de Chavannes
6 id au Sr Langlois
7 id à Mr Tisserand
8 id au Sr Celloy à la compagnie
9 id au Sr Celloy à la Compagnie
10 id au Sr Normandville à la compagnie
11 id au Sr Fazende
12 id au Sr Dumont
13 id au Sr Desfeuilles
14 id à la Sr Dumont
15 id au Sr Dauneville
16 id au Sr Beauchesne Chauvin
17 id au Sr Duval
18 id au Sr Verdun
19 id au Sr Celloy Screvan (Frere)
20 id à Mr St Martin
21 id au Sr Celloy
22 id au Sr Celloy
23 Fonderie
24 Forge et la marine
25 Magasin des affronts
26 Chantier
27 Terrain donné à mettre des bois et autres
28 Id pour terre
29 Emplacement pour le
30 Tenaire à la grand magasin
31 id appartenant à la compagnie
32 Le Gouvernement
33 Maison à la Compagnie
34 au Sr Villeu
35 id Normands
36 à Mr de Lamothe
37 à des Pallieres
38 id id Kelly et associé
39 à Mr Carthignette
40 au Sr Legon
41 au Sr Duquet
42 à la Compagnie
43 Hôpital
44 Terrain destiné pour les enfans Ilés
45 au Sr Fondeur
46 au Sr Desnilly
47 à la concession de Mr Rayer
48 au Sr Desmarais
49 au Sr Leclerc
50 à Mr Fleurian
51 au Sr Desmarest
52 au Sr Verdun
53 à Mr Brunet
54 à la Compagnie
55 au Sr Desnilly
56 à Mr Tisserand
57 à Mr Brunet
58 à la Compagnie
59 au Sr Hernandez
60 à Mr Brulé
61 à la concession de Mrs Paris
62 au Sr Hilaire
63 à la Cie Lorgin
64 au Sr Vitre
65 au Sr Leconte
66 au Sr Du Coudrayer
67 au Sr Bonpart
68 au Sr Leroy
69 au Sr Clapier
70 au Sr Le Fournier
71 à Mr Desupérintendt maintenant de la Compagnie
72 au Sr Celatte
73 terrains au Sr Belair
74 id au Sr Bourbeaux
75 au Sr Chemelin
76 au Sr Bradel habitant
77 à Mr de Bruat
78 à la concession de Mrs Jeanne
79 au Sr Chauvilly
80 à Mr Michel
81 au Sr Auffray
82 au Sr Agnard
83 à la Compagnie
84 au Sr Rivard
85 à Mr de Loubry
86 Corps de gardes
87 les Capucins
88 à la Cie Crespanier
89 à Joseph Carrière
90 au Sr Lacaze
91 au Sr Lacaze Leine
92 au Sr Caron
93 au Sr Dreux
94 au Sr Montbrun
95 au Sr Caron
96 au Sr Dreux
97 id
98 Capucins
99 au Sr Pierre de Misserie
100 à la Vve Sr Jean
101 au Sr Morand
102 au Sr Malot
103 au Sr François Lafleur
104 à la Cie Guillaume
105 au Sr Barrasein
106 au Sr Malot
107 au Sr Beauvillain
108 au Sr Robert
109 au Sr Gouphin
110 à la Vve Cardinal
111 au Sr Bijart
112 au Sr Salomon
113 à la Cie Conjectures
114 à la Cie Dumont
115 à la Bretonne
116 au Sr Grandjean
117 à la Grand court
118 au Sr Morrongo
119 à la Pierre
120 au Sr Mureau
121 au Sr Lugo et de la Chandais
122 au Sr Lemaire
123 au Sr Morisset
124 à Mme Bonpart
125 au Sr Alexandre
126 au Sr Desmarillery
127 au Sr Lavigne
128 au Sr Grandjean
129 au Sr La Liberté
130 aux enfans du Sr Rondonis
131 au Sr Lagendre
132 — id —
133 au Sr Quentin
134 Terrain ou sont les Casernes Cap. de la Compie
135 au Sr St Hilaire
136 à la Rond
137 au Sr Hamond
138 à la Vve de Mirabeau
139 à la Compagnie
140 au Sr Delaire
141 au Sr Perrier
142 au Sr Menard
143 à la Fontaine
144 au Sr Cartier
145 au Sr Rocher
146 au Sr Robert
147 au Sr Manoralle
148 au Sr Durante
149 au Sr Paulad
150 au Sr Barnard
151 au Sr Becas
152 au Sr Tennessee
153 à Marie Francisco
154 au Sr Lefranc
155 à Forestier
156 au Sr Arnet
157 à la Bastillon
158 à Marie Michel
159 au Sieur Schmit
160 à la Cie Sanier
161 au Sieur Cardonne
162 au Sr Cizier
163 à Lafaret
164 au Sr Montagnier
165 au Sr La Riviere
166 au Sr Jazon
167 au Sr Mauthier
168 au Sr Perrot
169 au Sr Lemarie
170 au Sr Carpart
171 au Sr Ringot
172 au Sr Leroi
173 à Jean Louis
174 au Sr Masson
175 —
176 au Sr Bellerive
177 au Sr Lacoste
178 au Sr Fontenot
179 au Sr Labbé
180 au Sr Chesnier
181 au Sr Lamarche Lerre
182 au Sr Pascal
183 au Sr Cornelius
184 à la Vve Guillaume
185 au Sr Debreuil
186 ou est point concédé
187 — id —
188 — id —
189 au Sr Le Beau
190 au Sr Raymond
191 au Sr Ville
192 au Sr Surcepart
193 au Sr Perier
194 au Sr Delile
195 au Sr Benoit
196 à la Vve Dineau
197 au Sr Delaronde
198 au Sr Cizier
199 au Sr Fournier
200 à la Vve Bogue
201 au Sr Cizier
202 au Sr Caron
203 à la Pitzarre
204 au Sr Pradel
205 à la nommée Marie Fournel
206 au nommé [illegible] Cadais
207 à la Grande Cour
208 ou est point concédé
209 à la Grand Cour
210 au Sr Rossard
211 au Sr Paul
212 au Sr Dauphin
213 au Sr Meisnier
214 au Sr Guillard
215 au Sr Lejeune
216 au Sr Lalonde
217 au Sr Jean Louis
218 au Sr Leclerc
219 au Sr Leclerc
220 au Sr Leclerc
221 au Sr Marsseau
222 au Sr Lalivier
223 au Sr Lavette
224 à Mde de Lally
225 au Sr Christine
226 au Sr de Lally
227 au Sr Chatel
228 au Sr Leclerc, commandant pour le roy aux Illinois
229 au Sr Carelle
230 au Sr Le Gal
231 à la nommée Le Brossard
232 au Sr Gentilly
233 au Sr Barreau
234 au Sr Gentilly
235 au Sr de Pailer
236 à 237 ne doit point concédé
238 au Sr Bridetant
239 au Sr Du Coudray
240 au Sr Babin
241 au Sr Bernard
242 au Sr Dufresne
243 au Sr Lafflemt
244 au Sr Forestier
245 au Sr Pamphile
246 au Sr Martin
247 à 248 ne doit point concédé
249 au Sr Forestier
250 au Sr Carmet
251 au Sr Dauneville
252 au Sr Renault
253 au Sr Cailly
254 au Sr Chevalier
255 au Sr Bienville
256 au Sr Bernard
257 au Sr Bonnet
258 au Sr Lerou
259 au Sr Allain Gendelon
260 au Sr Rodesson
261 au Sr Flamand
262 au Sr Bonnet
263 au Sr Quinsesson
264 au Sr Mercerain
265 au Sr Lantier
266 au Sr Prunaud
267 au Sr Lambert
268 au Sr Larade
269 au Sr Blanchemanteau
270 Il n'est point concédé
271 au Sr Xavier
272 au Sr Chevalier
273 à 274 ne doit point concédé
275 au Sr Riche
276 au Sr Cauchois
277 —
278 au Sr Courtableau
279 à 280 au Sr Bourguignon
281 n'est point concédé
282 au Sr Barre
283 au Sr Vincent
284 à 285 ne doit point concédé
286 —
287 au Sr Fournier
288 au Sr Barre
289 au Sr St Lenet
290 à la Fosse
291 au Sr Courtableau
292 au Sr Comtois

Levé et dessiné par moi
Ingr - Gauchon

Le soussigné Capitaine et Ingénieur certifie le présent plan véritable
à la Nlle Orléans 15 Mars 1728
Signé - Benaston

Vu par Nous Commissaire Ordonnateur de la Nouvelle France pour le Roy, le présent plan de la Nouvelle Orléans, levé par le Sr Benaston Capitaine Ingénieur, pour être annexé à l'original de l'établissement de la Colonie, pour y avoir recours au besoin.
Fait à la Nlle Orléans le 15 Mars 1728
Salmon

Vu par Nous Commissaire Ordonnateur de la Nouvelle France pour le Roy, le présent plan de la Nouvelle Orléans, levé par le Sr Benaston Capitaine Ingénieur, pour être annexé à l'original de l'établissement de la Colonie, pour y avoir recours au besoin.
Fait à la Nlle Orléans le 15 Mars 1728
Salmon

Pour copie conforme à l'original de l'établissement de la Colonie, et du plan y annexé, qui est au Dépôt des Colonies.
Le Chevalier Général du Service de la Marine et des Colonies, et Ordonnateur pour le Roy aux Isles du Vent de l'Amérique
Le Chevalier Desmarets

Pour copie conforme à l'original de l'établissement de la Colonie, et du plan y annexé, qui est au Dépôt des Colonies.
Le Chevalier Général du Service de la Marine et des Colonies, et Ordonnateur pour le Roy aux Isles du Vent de l'Amérique
Le Chevalier Desmarets

Le Conseil d'Etat du Roy, ayant vu le présent plan de la Nouvelle Orléans, levé par le Sr Benaston Capitaine Ingénieur, pour être annexé à l'original de l'établissement de la Colonie, pour y avoir recours au besoin.
Fait à la Nlle Orléans le 15 Mars 1728
Salmon

Le Conseil d'Etat du Roy, ayant vu le présent plan de la Nouvelle Orléans, levé par le Sr Benaston Capitaine Ingénieur, pour être annexé à l'original de l'établissement de la Colonie, pour y avoir recours au besoin.
Fait à la Nlle Orléans le 15 Mars 1728
Salmon

Rue de Bourbon
Rue de Chartres
Rue Royale
Rue de Conti
Rue St Louis
Rue de Toulouse
Rue d'Orleans
Rue St Ann
Rue de Burgogne
Rue de Dauphine
Rue de Bienville
Rue de Condé
Rue de Bourbon
Place d'Armes
Quai
Quai
Mississipi Fleuve
St Louis
Supreme Court of Louisiana
Whereas the parties have not agreed to the true contents of the plots 1 & 2 & 3 — that plan referred to in the decree of this Court, this is a copy, will be laid before the trial of this cause, to the Supreme Court of the United States.
New Orleans April 5th 1834
A. D. Le Breton
Clerk
Echelle de 100 Toises.
0 10 20 30 40 50

PLAN de la Nlle Orléans

Telle qu'elle était en 1728

231. au St Maurceau
232. au St Sulpice
233. au St Xavier
234. à Mr de Kolly
235. au St Christophe
236. au St de Kolly
237. au St Louis
238. au St Frederic, Commandant pour le Roy aux Illinois
239. au St Canelle
240. au St Le Gras
241. à la commune à Tousard
242. au St Gautier
243. au St Sauvage
244. au St Gautier
245. au St de Palais
246 à 249. ne sont point arrivés
250. au St Baudouin
251. au St Dubreuil
252. au St Raphael
253. au St Forestier
254. au St Pamphile
255. au St Maurice
256 à 261. ne sont point arrivés
262. au St Tousaint
263. au St Carmé
264. au St Coquerille
265. au St Renaud
266. au St Bailly
267. au St Gautier
268. au St Berardon
269. au St Blanc
270. au St Leon
271. au St Alleaume Gondelus
272. au St Rodesson
273. au St Flamand
274. au St Renaud
275. au St Guillaisson
276. au St Allegrain
277. au St Lantier
278. au St Francisco
279. au St Lambert
280. au St Lorado
281. au St Marchemanteau
282. St Vast point à combattre
283. au St Xavier
284. au St Clerc
285. au St point à combattre
286. au St Rufin
287. au St Canelle
288. — id —
289. au St Genetteau
290 à 294. au St Baumgnigneau
295. au St point à combattre
296. au St Barré
297. au St Vincent
298 à 300. ne sont point arrivés
301. — id —
302. au St Faucier
303. au St Barre
304. au St St Laurent
305. au St Faucet
306. au St Barthelemy
307. au St Comtois.

Levé et dressé par moi
Ingr - Pauchon

En conséquence Capitaine et Ingénieur en chef du
présent plan certifie le
à la Nlle Orléans 10 Mars 1728
Signé - Benaston

Pour copie conforme
Le Commissaire
Ordonnateur de la Marine
Chargé du détail des fortifications
des Colonies
Signé

Mississipi Fleuve.

Quai.

Quai.

Quai.

Place d'Armes.

Rue de Chartres

Rue Royale

Rue Condé

Rue de Bourbon

Rue de Orleans

Rue St Louis

Rue St Pierre

Rue St Ursule

Rue St Anne

Rue St Joseph

Rue de l'Arsenal

Rue des Tanneurs

Rue des Ursulines

Rue des Capucins

Rue des Remparts

Rue St Philippe

Rue St Louis

Rue St Pierre

Rue St Ursule

Rue St Anne

Rue St Joseph

Rue de l'Arsenal

Rue des Tanneurs

Rue des Ursulines

Rue des Capucins

Rue des Remparts

Rue St Philippe

St Louis ou

Supreme Court of Louisiana

No. 1934 On the petition here on appeal in the case of [illegible] of the file of this Court No. 1934 the plan of the premises in which [illegible] is a copy will be read before the trial of this cause to the Supreme Court of the United States.

New Orleans May 5th 1934

A. D. Le Breton Clerk.

Echelle de 100 Toises.

0 10 20 30 40 50 100 Toises.

f. 44.

N. 7. W. 492 poles
N. 88. W. 280 poles
N. 32. W. 214 poles
N. 45. E. 132 poles
S. 22. E. 240 poles
S. 13. E. 308. poles
N. 85. E. 432 poles
N. 75. E. 212 poles
Black oak
Post oak
Elm
Ash
Walnut
Hickory
Sugar tree
Locust
Beech
Sycamore
Buckeye
Dogwood
Persimmon
Cherry
Maple
Linden
Hackberry
Mulberry
Willow
Poplar
Cottonwood
Sassafras
Pawpaw
Hazel
Spice wood
Grape vine
Prickly ash
Red bud
Crab apple
Haw
Plum
Elder
Gooseberry
Rose bush
Honey locust
Coffee bean
Iron wood
Papaw
Pine
Cedar
Holly
Sumach
Alder
Willow
Ivy
Moss
Rock
Sand
Gravel
Clay
Limestone
Sandstone
Coal
Iron ore
Lead ore
Salt water
Fresh water
Mineral water
Sulphur water
Chalybeate water
Medicinal water
Hot water
Cold water
Warm water
Boiling water
Steam
Vapour
Fog
Mist
Rain
Snow
Hail
Sleet
Frost
Ice
Thunder
Lightning
Wind
Storm
Hurricane
Tornado
Earthquake
Volcano
Eruption
Lava
Ashes
Smoke
Flame
Heat
Cold
Light
Darkness
Shade
Sunshine
Moonlight
Starlight
Twilight
Dawn
Day
Night
Midnight
Noon
Morning
Evening
Afternoon
Spring
Summer
Autumn
Winter
Seed time
Harvest
Vintage
Flood
Drought
Famine
Plenty
Abundance
Scarcity
Want
Poverty
Wealth
Riches
Gold
Silver
Copper
Iron
Steel
Tin
Zinc
Brass
Bronze
Pewter
Lead
Mercury
Quicksilver
Platinum
Nickel
Cobalt
Manganese
Arsenic
Antimony
Bismuth
Tungsten
Molybdenum
Uranium
Thorium
Cerium
Lanthanum
Yttrium
Erbium
Terbium
Ytterbium
Scandium
Gallium
Germanium
Rhenium
Ruthenium
Rhodium
Palladium
Osmium
Iridium
Platinum
Gold
Silver
Copper
Iron
Steel
Tin
Zinc
Brass
Bronze
Pewter
Lead
Mercury
Quicksilver
Platinum
Nickel
Cobalt
Manganese
Arsenic
Antimony
Bismuth
Tungsten
Molybdenum
Uranium
Thorium
Cerium
Lanthanum
Yttrium
Erbium
Terbium
Ytterbium
Scandium
Gallium
Germanium
Rhenium
Ruthenium
Rhodium
Palladium
Osmium
Iridium
Platinum
A. 3. black oak growing out of one root
B. 1 sugar tree
1200 carpenters in the Belle fontaine
1838.

7

des verifications d'arpentages commencées en 1796 par ordres du Gour.r Gen.l le Baron de Carondelet, et continuée par ordre du Gouverneur Don. Manl. Gayoso de Lemos, jusques au 9 Decembre 1798. afin de reconnaitre les titres et les limites des terres qui environnent les Communes de la Ville de la Nouvelle Orleans, lesquelles diligences ont été pratiquées en présence de Mr. le May.r de la place nommé par le Gour.r Mr. Reggio et Dalcant Regidors, commissaires nommés d'office par le Cabildo, et Mr. Fondevergne procureur Syndic, les quels ont tous accompagnés mes operations, après avoir pris connaissance des titres que nous ont été présentés.

Bayou St. Jean.

Habitation de Mr. Jean Gravier

Habitation de Mme Veuve Delor Sarpie.

Commune de la Ville.

Commune de la Ville.

Terres vendues aux RR Jesuites le 11 Avril 1726. aujourd'hui Jean Gravier

Concession de M.r Nicolas Vidal. au 26 Mars 1800.

Concession de Mr. Jean B.te Chevalier de Louboey. Gouverneur de la Louisiane. du 2 Mars 1731

PLAN

des verifications & arpentages commencées en 1790 par ordres du Gouv.t Genl le Baron de Carondelet et continué par ordre du Gouverneur Don Man.l Gayoso de Lemos, jusques au 9 Decembre 1798. afin de reconnaitre les titres et les limites des terres qui environnent les Communes de la Ville de la Nouv.lle Orleans, lesquelles diligences ont été pratiquées en presence de M.r le Maire de la place nommé par le Gouv.t M.r Reggio et Dalcant Regidors commissaires nommés d'office par le Cabildo, et M.r Fonderegne procureur Syndic, les quels ont tous accompagnés mes operations, après avoir pris connaissance des titres qui nous ont été presentés.

Habitation de Mr. Jean Gravier

Limite originaire de la Concession de Mrs. de Bienville vendu aux Pp. Jésuites le 11 Avril 1726. aujourd'hui Jean Gravier

Au procès verbal d'arpentage de Mr. Olivier De Vezin en datte du 22 Juillet 1763 qui a limité la Communauté des PP. Jésuites le 10 Août 1734, par Mrs. de Bienville et Salmon, depuis Destrehan de leurs limites mitoyennes avec la Ville jusqu'à la principale branche du Bayou St. Jean, ce qui fait une superficie de 239 Arps. 100 toises quarrés prises sur les communes de la Ville laquelle quantité ne leur a été accordée, suivant la dite concession qu'en consideration d'un Canal qu'ils s'étoient obligés de faire jusqu'à la première branche du Bayou St. Jean pour y procurer de la Ville une communication par eau, mais sans exécution.

Les Communes de la Ville par les P.P. Jésuites, en vertu d'une concession du 10 Août 1734, et annullé suivant le procès verbal d'arpentage de Mr. Olivier De Vezin en date du 22 Juillet 1763.

Limite de Mr. Jean Bte. du Mouchy 1799 Levée déposée au bord du Mississipi

Limite de la Concession de Mr. Bienville vendu aux Pp. Jésuites le 11 Avril 1726. aujourd'hui Jean Gravier

Limite de la Concession de Mr. Bienville vendu aux Pp. Jésuites le 11 Avril 1726. aujourd'hui Jean Gravier

Limite de la Concession de Mr. Bienville vendu aux Pp. Jésuites le 11 Avril 1726. aujourd'hui Jean Gravier

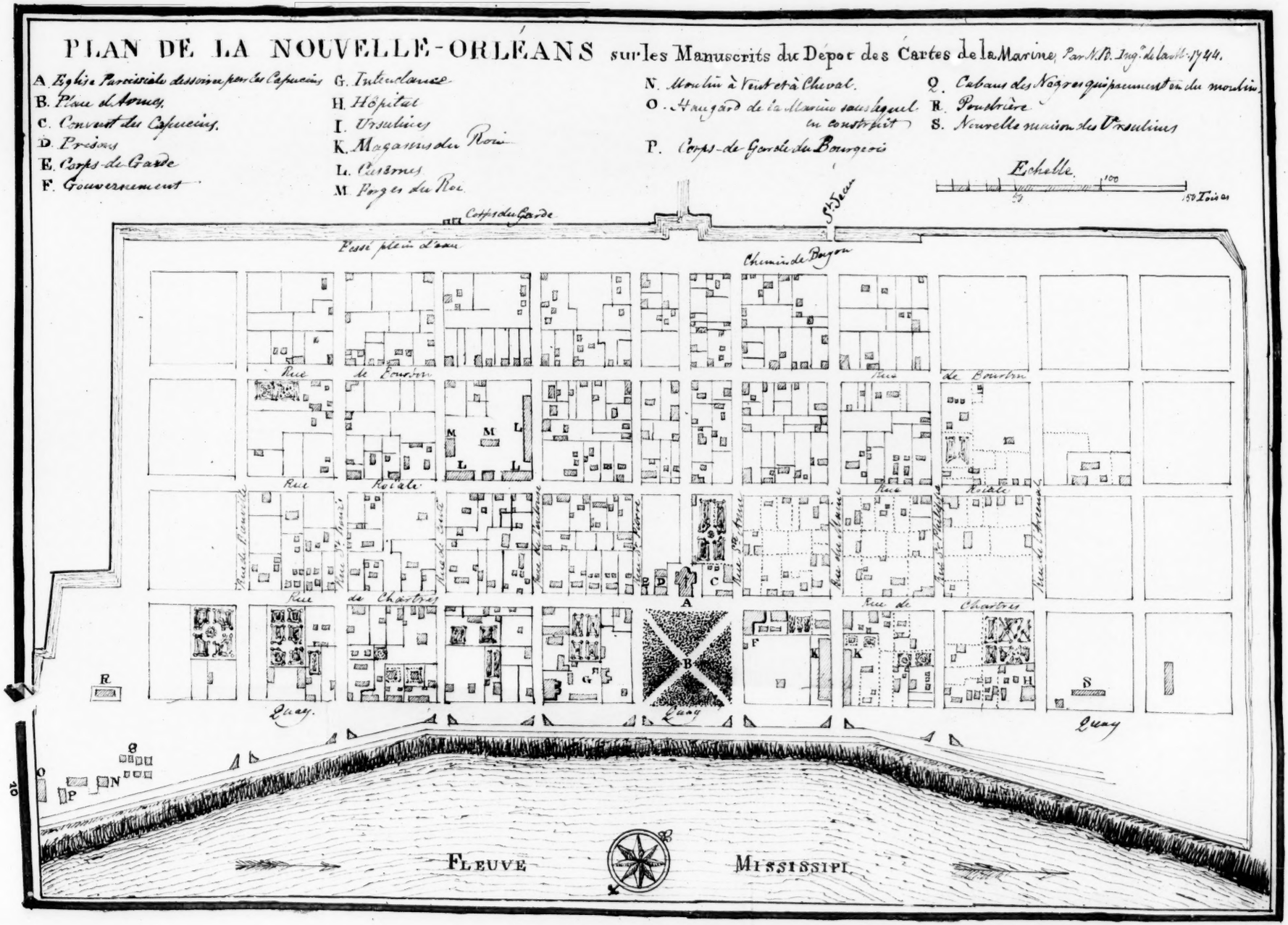
Limite de la Concession de Mr. Bienville vendu aux Pp. Jésuites le 11 Avril 1726. aujourd'hui Jean Gravier

Habitation de Mr. Mazange

Habitation de Mr. Dreux

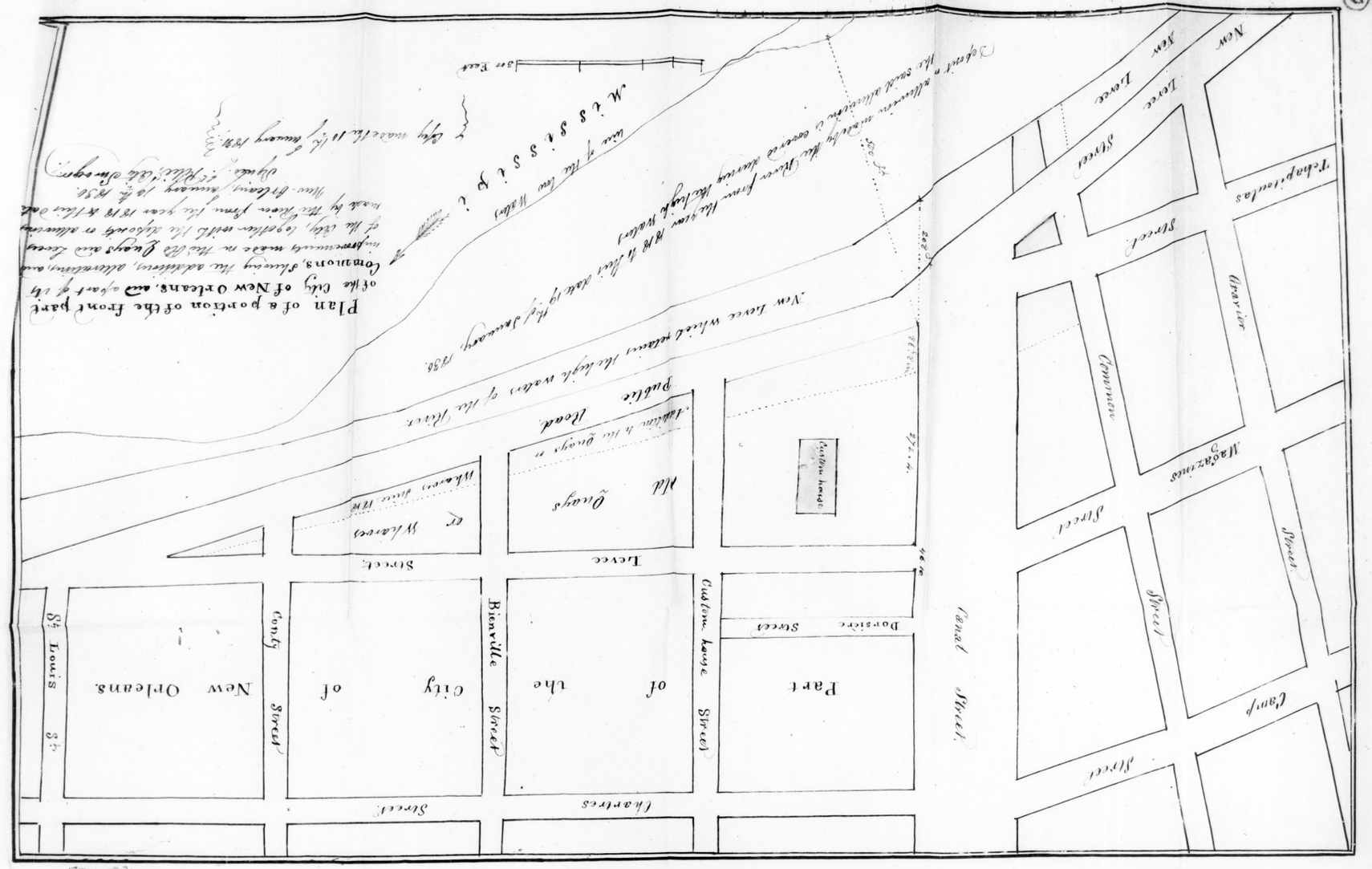
Habitation de Mr. Dreux

Habitation de Mr. Dreux



I the undersigned do certify that this plan is a true and faithful copy of an engraved plan of the City of New-Orleans, which exists in the history of New France, published at Paris in the year 1744, by the Rev.d Father Charlevoix a jesuit, in 3 Vol. in 4.to 2.d Vol. page 433./. New Orleans March 5.th 1831.

Signed, J.h Pilié, City Surveyor /.


Part of the City of New Orleans
Old Quays
Public Road
Levee
Canal Street
Custom house
Dorsiere Street
Bienville Street
Chartres Street
Levee Street
Old Quays
Public Road
Custom house
Canal Street
Bienville Street
Chartres Street
Levee Street
Dorsiere Street
Custom house
Part of the City of New Orleans
Old Quays
Public Road
Levee which reclaims the high waters of the River
Canal Street
Camp Street
Commons of the City
Magazines
Levee Street
Part of the Commons
Custom house
Levee Street
Bienville Street
Chartres Street
Levee Street
Dorsiere Street
Custom house
Part of the City of New Orleans
Old Quays
or Wharves
Public Road
Levee which reclaims the high waters of the River
Canal Street
Camp Street
Commons of the City
Magazines
Levee Street
Part of the Commons
Custom house
Mississippi River
Tchapitoulas Levee
Plan of a portion of the front part of the City of New Orleans in 1818
References
A. Old Fort St Louis.
C. Old gate of the City.
D. Old palissade
B. Old Battery
Scale of Feet

A. Eglise
B. Poudrière
C. Pavillon des enfants de Gouvernement
D. Direction
E. Grands magasins
F. Magasin des agrès et appareaux
G. Pavillon d'Officiers servant le magasin pour mettre les bois
H. Les bribadiers des ouvriers
I. Hôpital
K. Corps-de-Garde
L. Prison
O. Forges de la Compagnie
N. Idem de la Marine
Q. Maison ou loge le médecin R - de Cr de
S. id. id. l'Ingenieur
T. Magasin à poudre
V. Moulin
X. Ecurie
Y. Chantiers pour mettre le bois de la Compagnie qui sont de part pour l'Artillerie
Z. Maison de
1 Isle aux

62. à la Vve Sarazin
63. au Sr. Vitre
64. au Sr. Lecourt
65. au Sr. La Goublaye
66. au Sr. Poupart
67. au Sr. Jarry
68. au Sr. Rojo.
69. au Sr. La Fromière
70. à Deux Passagers tous maintenant à la Compag
71. au Sr. Destably
72. Forgeais au Sr. Belair
73. id. au Sr. Bambeau
74. au Sr. Thomelin
75. au Sr. Brûlé habitant
76. à Mr. de Beaucé
77. à la Concession de Mezier
78. au Sr. Chamilly
79. à Mr. Michel
80. au Sr. Aubriane
81. n.

144
145.
146
147.
148
149.
150.
151
152
153.
154

PLAN DE LA VILLE DE LA NOUVELLE ORLEANS,

où est marqué la levee de terre qui la garantit de l'inondation et l'augmentation des maisons faites depuis le 1er Septembre 1723

Place d'Armes.

Quay.

Quay.

The undersigned do certify that this plan is a true and faithfull Copy of a plan what exists in the archives of the City Council of the City of New Orleans, and which is preserved from the office of Public Charts and plans attached to the Ministry of Marin in France. — New-Orleans, March 5th 1834.

Signed Jh. Pelié, City Surveyor.

FLEUVE

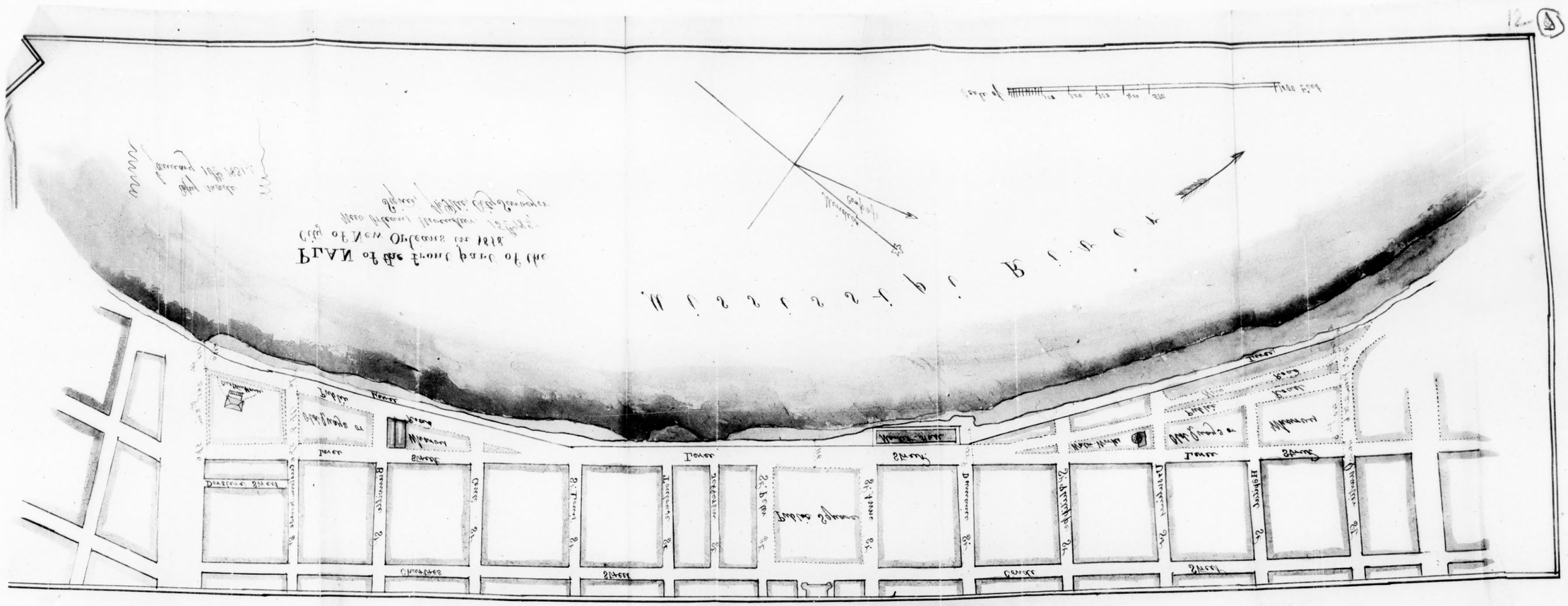
St

LOUIS.

100 Toises

A la Nouvelle Orleans le 29 May 1724

Signé, De Pauger



PLAN of the front part of the City of New Orleans, shewing the additions alterations, and improvements made in the Quays and Levees of said City, together with the deposits or alluvions made by the river from the year 1815 to this date

New Orleans, November 15th 1804

Signed J. Pilie City Surveyor

Observations. The red lines with the yellow ground reference to the additions, alterations and improvements made as stated in the titles of the present plan.

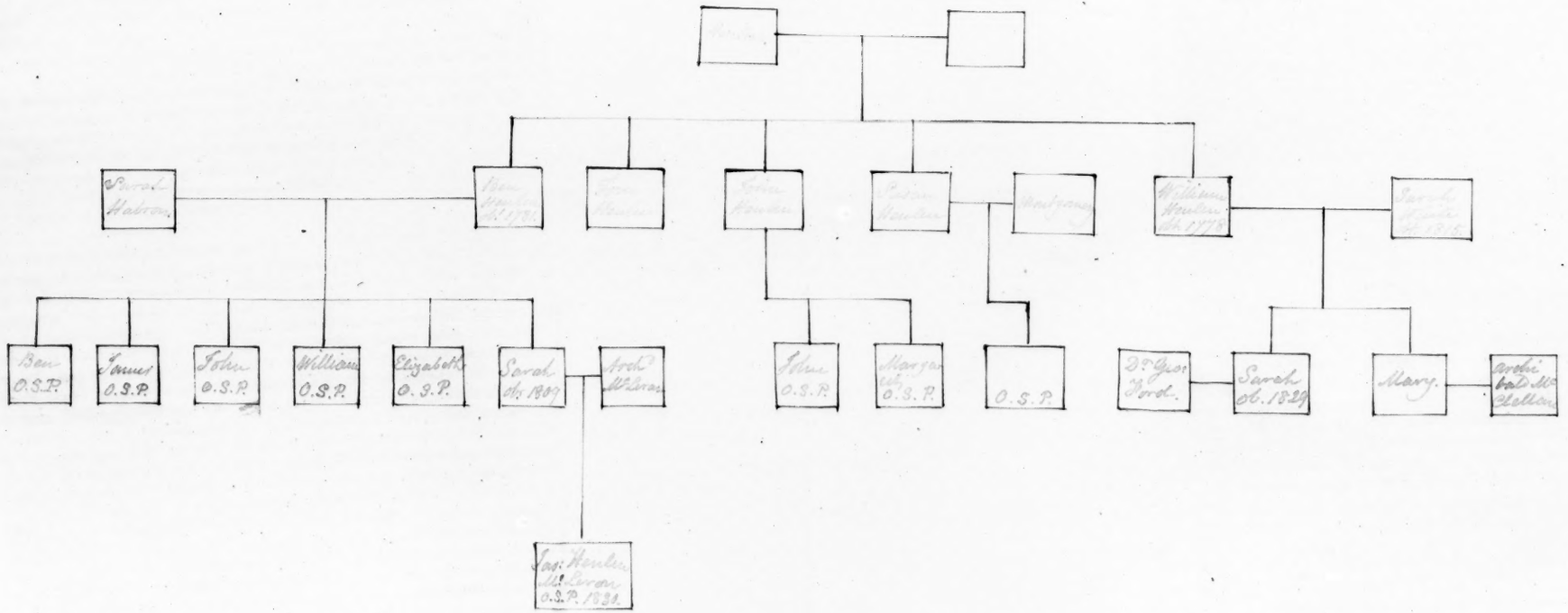
Observations, made the 10th of January 1831

The blue line bordering with a yellow colour represents the New Levee and the Wharves erected this year 1831, and points last year 1830.

(a, b, c, Wharves erected in the year 1830.)

Mississippi River.

Scale of Feet


Ben O.S.P.
James O.S.P.
John O.S.P.
William O.S.P.
Elizabeth O.S.P.
Sarah d. 1807
Jas. Henley M'Elwain O.S.P. 1831
John O.S.P.
Margaret O.S.P.
O.S.P.
Sarah d. 1829
Mary.